IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

TRANSWEST DISTRIBUTION, and ROBERT THOMAS, Plaintiffs, vs. INTERSTATE BRANDS WEST CORP., Defendants.	ORDER EXTENDING RESPONSE TIME Case No. 1:03-CV-74 TS

On April 26, 2010, the Court converted the Motion to Dismiss to one for summary judgment and set a response time of May 20, 2010. On the day that time was to expire, an individual contacted chambers to represent that the parties had stipulated to an extension of time to respond because of the death of a counsel for the Plaintiffs. It is therefore

ORDERED that the time for Plaintiffs to file a response to Defendant's Motion to Dismiss is extended another 21 days to June 14, 2010. Defendant may file an optional reply no later than 14 days following any response by Plaintiff.

DATED May 24, 2010.

BY THE COURT:

TED STEWART
United States District Judge

UNITED STATES DISTRICT COURT

Northern Division District of Utah

UNITED STATES OF AMERICA
V.
Kevin Daniel Murphy

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX1:08CR000102-001

USM Number: 14833-081

L. Clark Donaldson, FPD
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☑ was found guilty on count(s) 1 of superseding indictment
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC Sec. 2250	Failure to Update Register		1s

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/13/2010
Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Tena Campbell — U.S. District Judge
Name of Judge — Title of Judge

5/24/2010
Date

DEFENDANT: Kevin Daniel Murphy
CASE NUMBER: DUTX1:08CR000102-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

48 months.

☑ The court makes the following recommendations to the Bureau of Prisons:

The court recommends defendant be placed in a facility where there is a sex offender program.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, w ith a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Kevin Daniel Murphy
CASE NUMBER: DUTX1:08CR000102-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

Life.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☑ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Kevin Daniel Murphy
CASE NUMBER: DUTX1:08CR000102-001

SPECIAL CONDITIONS OF SUPERVISION

1. The court orders that the presentence report may be released to the state sex-offender registration agency if required for purposes of sex-offender registration.

2. The defendant shall participate in a sex-offender treatment program as directed by the USPO.

3. The defendant is restricted from contact with individuals who are under 18 years of age without adult supervision as approved by the USPO.

4. The defendant shall abide by the following occupational restrictions: Any employment shall be approved by the probation office. In addition, if third-party risks are identified, the USPO is authorized to inform the defendant's employer of his supervision status.

5. The defendant shall not view, access, or possess sexually explicit materials in any format.

6. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

7. The defendant shall participate in the United States Probation and Pretrial Services Office Computer and Internet Monitoring Program under a copayment plan, and will comply with the provisions outlined in Appendix C, Restricuted Commputer Access (no computer or internet access except for approved employment). Furthermore, all computers, Internet-accessible devices, media storage devices, and digital media accessible to the defendant are subject to manual inspection/search, configuration, and the installation of moritoring software and/or hardware.

DEFENDANT: Kevin Daniel Murphy
CASE NUMBER: DUTX1:08CR000102-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$ 0.00	$ 0.00

☐ The determination of restitution is deferred until ______. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$ 0.00	$ 0.00	

☐ Restitution amount ordered pursuant to plea agreement $ ____________

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Kevin Daniel Murphy
CASE NUMBER: DUTX1:08CR000102-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____, or
☑ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☑ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

Special Assessment Fee of $100 is due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT

Northern District of Utah

UNITED STATES OF AMERICA
V.
Steven Emile Holloway

JUDGMENT IN A CRIMINAL CASE
AMENDED

Case Number: DUTX 1:08-cr-000133-001 DB

USM Number: 01839-112

Julie George
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) I - Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18USC§111(a)(1) & (b)	Assault on Federal Officers Causing Bodily Injury		I

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☑ Count(s) II and III ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

4/23/2010
Date of Imposition of Judgment

Dee Benson
Signature of Judge

Dee Benson — U.S. District Judge
Name of Judge — Title of Judge

5/24/2010
Date

DEFENDANT: Steven Emile Holloway
CASE NUMBER: DUTX 1:08-cr-000133-001 DB

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

46 months. This sentence will run consecutive with case 2:08cr654 DB.

☑ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends a Federal Correctional Institution in Rochester, MN., along with the opportunity to participate and complete the 500 hour drug re-hab program. The Court informs the dft of his right to appeal within 10 days of entry of judgment.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Steven Emile Holloway
CASE NUMBER: DUTX 1:08-cr-000133-001 DB

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug/alcohol testing as directed by the probation office and pay a one-time $115.00 to partially defray the costs of collection and testing.

2. The defendant shall participate in a substance abuse evaluation, mental health evaluation and/or treatment under a co-payment plan as directed by the probation office. During the course of treatment, the defendant shall not consume alcohol nor frequent businesses where alcohol is the chief item of order.

3. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the United States Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Steven Emile Holloway
CASE NUMBER: DUTX 1:08-cr-000133-001 DB

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$ 4,465.39

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
WCF, 392 East 6400 South,SLC, Utah 841107	$2,404.37	$2,404.37	
Claim No. 2008-21796	$2,016.02	$2,016.02	

TOTALS	$ 4,420.39	$ 4,420.39

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Steven Emile Holloway
CASE NUMBER: DUTX 1:08-cr-000133-001 DB

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

Restitution in the amount of $4,420.39 with regular payments to begin immediately is due and payable: Workers Compensation Fund, 392 East 6400 South, Salt Lake City, Utah 84107. $2,404.37 - Claim No. 2008-21796 and $2,016.02 - Claim No. 2008-21798.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

CARLIE CHRISTENSEN, Acting United States Attorney, (#0633)
DON BROWN, Special Assistant United States Attorney, (#0464)
Attorneys for the United States of America
348 East South Temple
Salt Lake City, UT 84111
Telephone: 801-524-4156
Facsimile: 801-524-5803

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. MEDARDO VALDEZ VALENZUELA, Defendant.	**ORDER TO CONTINUE JURY TRIAL** Case No. 1:09CR82 DB Judge Dee Benson Magistrate Judge Samuel Alba

The above-captioned matter having come before the Court on May 20, 2010, for the appointment of counsel, prior counsel having been allowed to withdraw, and it being necessary to allow new counsel time within which to evaluate the status of the proceedings and prepare for trial, and good cause appearing;

It is hereby ORDERED that the trial previously scheduled for May 24, 2010, is hereby continued to the 26th day of July, 2010, at 8:30 a.m. Pursuant to 18 U.S.C. §316(h), the

Court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial. Accordingly, the time between the date of this order and the new trial date is excluded from speedy trial computation.

Dated this 21st day of May, 2010.

BY THE COURT:

SAMUEL ALBA
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. RILEY SCOTT HUNTER, Defendant.	CASE: 1:10CR00002 DB PRELIMINARY ORDER OF FORFEITURE JUDGE: DEE BENSON

IT IS HEREBY ORDERED that:

1. As a result of a guilty plea to Count 1 of the Indictment for which the government sought forfeiture pursuant to 18 U.S.C. § 924, the defendant Riley Scott Hunter shall forfeit to the United States all property that was proceeds of, involved in, used, or intended to be used in a violation of 18 U.S.C. § 922(g)(1), including but not limited to:

- Jimenez Arms 9mm Pistol, Serial Number: 054766
- Associated Ammunition

2. The Court has determined that based on a guilty plea of Felon in Possession of a Firearm, that the above-named property is subject to forfeiture, that the defendant had an interest in the property, and that the government has established the requisite nexus between such property and such offense.

3. Upon entry of this Order the Attorney General, or its designee, is authorized to seize and conduct any discovery proper in identifying, locating, or disposing of the property subject to forfeiture, in accordance with Fed. R. Crim. P. 32.2(b)(3).

4. Upon entry of this Order the Attorney General or its designee is authorized to commence any applicable proceeding to comply with statutes governing third party interests, including giving notice of this Order.

5. The United States shall publish notice of this Order on its intent to dispose of the property in such a manner as the Attorney General may direct. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the subject property.

6. Any person, other than the above named defendant, asserting a legal interest in the subject property may, within thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the Court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property, and amendment of the order of forfeiture purs uant to 21 U.S.C. § 853.

7. Pursuant to Fed. R. Crim. P. 32.2(b)(3), this Preliminary Order of Forfeiture shall become final as to the defendant at the time of sentencing and shall be made part of the

sentence and included in the judgment.

8. Any petition filed by a third party asserting an interest in the subject property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's acquisition of the right, title, or interest in the subject property, any additional facts supporting the petitioners claim and relief sought.

9. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

10. The United States shall have clear title to the subject property following the Court's disposition of all third party interests, or, if none, following the expiration of the period provided in 21 U.S.C. 853 which is incorporated by 18 U.S.C. § 982(b) for the filing of third party petitions.

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11. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

Dated this 21st day of May, 2010.

BY THE COURT:

Dee Benson

DEE BENSON, Judge
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Betty Anderson, Plaintiff vs. Wyeth, Wyeth Pharmaceuticals, and Pfizer, Defendants.	*	ORDER FOR PRO HAC VICE ADMISSION Case No. 2:04-cv-00474

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of LaMar F. Jost in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 20th day of May, 2010.

Tena Campbell
U.S. District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Betty Anderson, Plaintiff vs. Wyeth, Wyeth Pharmaceuticals, and Pfizer, Defendants.	* * * * * *	ORDER FOR PRO HAC VICE ADMISSION Case No. 2:04-cv-00474

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Kevin J. Kuhn in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 20th day of May, 2010.

Tena Campbell
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. UNION PACIFIC RAILROAD COMPANY, Defendant.	ORDER
UNION PACIFIC RAILROAD COMPANY, Third-Party Plaintiff, vs. PANDROL JACKSON and HARSCO COMPANY, Third-Party Defendants.	Case No. 2:05-CV-545 TC

This matter is before the court on Third-Party Defendants Pandrol Jackson and Harsco Company's motion for an amended order. For the reasons set forth at the close of the May 24, 2010, hearing, the motion (Docket No. 163) is DENIED.

The court will hold a final pretrial conference on July 13, 2010, at 1 p.m., and a bench trial beginning on July 28, 2010, at 8:30 a.m., and running through Saturday, July 31, 2010, if necessary.

SO ORDERED this 24th day of May, 2010.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
Chief Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

K-TEC, INC., Plaintiff, vs. VITA-MIX CORPORATION, Defendant.	ORDER AND MEMORANDUM DECISION Case No. 2:06-CV-108-TC

Defendant Vita-Mix Corporation moves the court for summary judgment on the ground that K-TEC is not entitled to lost profits, pre-issuance royalties, or enhanced damages for willful infringement. Viewing the evidence, and making reasonable inferences therefrom, in a light most favorable to non-movant K-TEC, the court finds that genuine issues of material fact exist on all three issues. Accordingly, Vita-Mix's Motion for Summary Judgment of Lost Profit, Pre-Issuance Royalties and Enhanced Damages (Docket No. 473) is DENIED.[1]

[1]Vita-Mix also filed a Motion to Strike certain evidence relied upon by K-TEC. (See Docket No. 541.) Because the court finds that other unchallenged evidence in the record is sufficient to overcome Vita-Mix's motion for summary judgment, Vita-Mix's Motion to Strike is moot. Moreover, to the extent the court relies on evidence that has been challenged, the court finds that such evidence is admissible for the same reasons stated in K-TEC's opposition to the motion to strike.

ANALYSIS[2]

A. Summary Judgment Standard

Summary judgment is appropriate only if "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see also Justice v. Crown Cork & Seal Co., Inc., 527 F.3d 1080, 1085 (10th Cir. 2008). "An issue of material fact is genuine if a reasonable jury could return a verdict for the non-movant." Jenkins v. Wood, 81 F.3d 988, 990 (10th Cir. 1996). When applying this standard, the court must construe all facts and reasonable inferences from those facts in a light most favorable to K-TEC, the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Seegmiller v. LaVerkin City, 528 F.3d 762, 766 (10th Cir. 2008).

The party seeking summary judgment bears the initial burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). But if the non-moving party comes forward with admissible evidence that a reasonable jury could find for the non-moving party on the issue, summary judgment is not appropriate. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

B. Damages for Patent Infringement

Under the damages provision of federal patent law, upon a finding of infringement the

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[2]The parties have set forth the facts in great detail in the pleadings, so the court will not repeat them here unless they are essential to the decision. Because the court is reviewing the matter in the context of a motion for summary judgment, the court construes the facts in a light most favorable to non-movant K-TEC. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Seegmiller v. LaVerkin City, 528 F.3d 762, 766 (10th Cir. 2008).

court "shall award [the patent owner] damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the invention by the infringer[.]" 35 U.S.C. § 284 (2010). The phrase "damages adequate to compensate" includes lost profits, pre-issuance royalties, and enhanced damages for willful infringement. See 35 U.S.C. § 154(d) (pre-issuance royalties), § 284 (allowing enhanced damages up to three times the amount assessed); Grain Processing Corp. v. American Maize-Products Co., 185 F.3d 1341, 1349 (Fed. Cir. 1999) (lost profits).

1. Lost Profits

K-TEC must prove that it is entitled to lost profits based on an objective standard of "reasonable probability":

> [A] patentee need not negative every possibility that the purchaser might not have bought another product other than his absent the infringement. Instead, the patentee need only show that there was a reasonable probability that the sales would have been made "but for" the infringement. . . . Any doubts regarding the calculatory precision of the damage amount must be resolved against the infringer. . . . [Federal Circuit cases] represent the pervading principle that doubt in ascertaining appropriate damages comes down against the infringer . . . . Therefore, when the patentee establishes the reasonableness of the inference, the patentee has sustained the burden of proving his entitlement to lost profits for all infringing sales. The onus is then placed on the infringer to show that it is unreasonable to infer that some or all of the infringing sales probably caused the patentee to suffer the lost profits.

Kaufman Co., Inc. v. Lantech, Inc., 926 F.2d 1136, 1141-42 (Fed. Cir. 1991). The question of lost profits is a jury question. See, e.g., Utah Med. Prods., Inc. v. Graphic Controls Corp., 350 F.3d 1376, 1385 (Fed. Cir. 2003) (affirming jury's identification of relevant market under two-supplier market test); Micro Chemical, Inc. v. Lextron, Inc., 318 F.3d 1119, 1123-24 (Fed. Cir. 2003) (holding that issue should have gone to jury because there was genuine issue of material

fact concerning Panduit product demand factor).

Two tests (the two-supplier market test and the Panduit test) have been established to determine whether a patent holder is entitled to lost profits. The two-supplier market test was created before the Federal Circuit was established. See, e.g., Livesay Window Co., Inc. v. Livesay Indus., Inc., 251 F.2d 469, 471 (5th Cir. 1958). Since then, the Federal Circuit has reconciled the two tests by indicating that "the two-supplier market test collapses the first two Panduit factors into one 'two suppliers in the relevant market' factor." Micro Chemical, 318 F.3d at 1124. The court will address each in turn.

a. Two-Supplier Market Test

The first step when applying the two-supplier test is to determine the relevant market. "This requires an analysis which excludes alternatives to the patented product with disparately different prices or significantly different characteristics." Crystal Semiconductor Corp. v. TriTech Micro-Elecs. Int'l, Inc., 246 F.3d 1336, 1356 (Fed. Cir. 2001).

> The proper starting point to identify the relevant market is the patented invention. The relevant market also includes other devices or substitutes similar in physical and functional characteristics to the patented invention. It excludes, however, alternatives "with disparately different prices or significantly different characteristics."

Micro Chemical, 318 F.3d at 1124 (quoting Crystal Semiconductor, 245 F.3d at 1356)). Once the market is defined, the next step is to determine how many suppliers operate in that relevant market. Id.

In this case, the market is defined by substantially higher prices and blending products that perform at an entirely new "high performance" level. According to each party's damage expert, the average price for K-TEC's five-sided jar is $68.07, while the average price for the

unpatented four-sided jar is $39.44, a difference of $28.63 per jar. (Expert Report of Kevin Neels (attached as Ex. 10 to Decl. of David T. Movius, Esq.) [hereinafter "Neels Report"] at Ex. 15; Rebuttal Expert Report of Lance E. Gunderson, Sched. 14.) The price of the patented K-TEC five-sided jar is 42% higher than the unpatented four-sided jar. Dr. Neels also compared the price between the accused Vita-Mix jar and the non-accused Vita-Mix jar. The average price for the accused jar ranged from $27.50 to $29.03, whereas the price for the unpatented jar ranged from $22.50 to $23.75 for a difference of between $5.00 and $5.28. (Neels Report Ex. 16.) The price for the accused Vita-Mix jar is 18.2% higher than the non-accused jar. The patented product and the accused product are priced notably higher than other unpatented products.

There is a reason for the high price: K-TEC's patented technology embodied in both the K-TEC patented jar and the Vita-Mix jars performs at a much higher level than anything else in the market. Indeed, the invention claimed in both of the patents is a high performance blending container. ('117 Patent, Col. 2 lines 54-67.) During prosecution of the '117 patent, Richard Galbraith (K-TEC's Executive Vice President) presented a declaration showing that the five-sided jar blended a difficult-to-blend smoothie in fourteen seconds, as opposed to K-TEC's own prior art four-sided jar, which blended it in forty-two seconds. (Decl. of Dick Galbraith (Ex. X to Docket No. 478) at ¶¶ 4-10. See also internal Vita-Mix e-mail (Jan. 12, 2003) (stating that K-TEC's new blending jar was "the most serious threat we have had in the [Baskin Robbins] account in several years.") (Ex. 19 to K-TEC Mem. Opp'n); internal Vita-Mix e-mail (Dec. 12, 2002) (articulating Baskin Robbins' demand for Vita-Mix's new jar) (Ex. 18 to K-TEC Mem. Opp'n); internal Vita-Mix e-mail (May 10, 2002) ("Blendtec is giving Caribou [Coffee] 40 machines to test in the field. The only way we can stop them from changing is to let the

customer see the performance of our container. If we compare, we have a good shot at keeping the business. If we don't compare, we will lose it. I am sure this is just the start. I'm sure Blendtec is going to every account and showing them this container, which blows ours away.") (Ex 24 to K-TEC Mem. Opp'n). And Vita-Mix's own test showed that Vita-Mix's prior art 64-ounce jar blended two drinks in thirty seconds (with three or more drinks impossible), compared to K-TEC's five-sided jar, which blended four drinks in fifteen seconds. (May 10, 2002 e-mail from D. Scott Hinckley (Vita-Mix) to David Barnard et al. (Ex. 24 to K-TEC's Mem. Opp'n).)

Here, there is evidence to convince a reasonable jury that the four-sided jars, as well as commercial blenders made by Waring and Hamilton Beach, should be excluded as alternatives based on price difference and blending performance. See, e.g., Crystal Semiconductor, 246 F.3d at 1354-56 (reinstating jury's lost profits verdict based upon evidence that there were two suppliers in the "high quality market" for computer audio chips). In other words, K-TEC has presented evidence sufficient to convince a reasonable jury that the relevant market is the high performance blending market.

The final question in the two-supplier market test is "how many suppliers operate in the defined relevant market?" Micro Chemical, 318 F.3d at 1125. Here, there is evidence that only K-TEC and Vita-Mix compete in the high performance blending market.

For example, K-TEC has provided the testimony of a third-party retailer, Bintz Restaurant Supply, represented by Roger Brown. (See 30(b)(6) Dep. of Bintz Restaurant Supply (Ex. 8 to K-TEC Mem. Opp'n) at 50-52.) Bintz buys and resells the products of both K-TEC and Vita-Mix, and considers each to be "very good" vendors for Bintz. Roger Brown testified that there are only two viable competitors in the high performance commercial blending industry. He said,

"If I was getting [a blender] for commercial use, I would either get the Vita-Mix or [K-TEC's] Blendtec, probably. I believe that they're more powerful. We've had customers that have bought less powerful blenders and they don't work well for them." (Id. at 52.) See also Golden Blount, Inc. v. Robert H. Peterson Co., 438 F.3d 1354, 1370 (Fed. Cir. 2006) (affirming district court decision that lost profits award was appropriate because there was two-supplier market; in reaching conclusion, district court relied on testimony of third-party retailer). In Golden Blount, based on the testimony of the third-party retailer, the Federal Circuit found that "[a]lthough this evidence was not irrefutable, it was sufficient to shift the burden" to the alleged infringer. Id. at 1372. (See also Rule 30(b)(6) Dep. of George Wright (Ex.5 to K-TEC Mem. Opp'n) at 43-45, 92); Dep. of G. Wright (Ex. 6 to K-TEC Mem. Opp'n) at 156; Vita-Mix Strategic Plan for 2009 (Ex. 9 to K-TEC Mem. Opp'n) at V017819 (under "Competitive Landscape" heading, noting "[p]ossible creation of new category of 'high performance blenders' and that "category is becoming more popular."); Dep. of Lance E. Gunderson (Ex. 2 to K-TEC Mem. Opp'n) at 295 (opining that "two supplier market" consists of Vita-Mix and K-TEC).)

Based on the foregoing, the court finds that K-TEC has provided evidence of a reasonable probability that "but for" Vita-Mix's sales of the accused products, K-TEC would have made the sales that were made by Vita-Mix. In other words, K-TEC has satisfied its burden under the summary judgment standard and is entitled to present its lost profits damage theory under the two-supplier market test to the jury.

b. The *Panduit* Test

Alternatively, K-TEC is entitled to present the issue of lost profits to the jury based on the Panduit test. Under Panduit, a patentee may obtain lost profits by showing: (l) demand for the

patented product, (2) the absence of acceptable non-infringing substitutes, (3) manufacturing and marketing capability to exploit the demand, and (4) the amount of profit that would have been made. Panduit Corp. v. Stalin Bros. Fibre Works, Inc., 575 F.2d 1152, 1156 (6th Cir. 1978).

Vita-Mix only challenges the factual record supporting the first two Panduit elements: (1) demand, and (2) absence of an acceptable non-infringing substitute.

i. Demand for the Patented Product

As a threshold issue, the court addresses Vita-Mix's contention that the first Panduit factor requires demand for the specific feature (i.e., claim limitation) that distinguishes the patented product from non-patented features, not simply demand for the patented product. But the Federal Circuit has rejected such an argument. See DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc., 576 F.3d 1314, 1329-30 (Fed. Cir. 2009) (finding that first Panduit factor "does not require any allocation of consumer demand among various limitations recited in a patent claim," but "simply asks whether demand existed for the 'patented product, i.e., a product that is covered by the patent suit' or that 'directly competes with the infringing device.'").

Demand for the patented product can be established by sales of the patented product. DePuy Spine, 567 F.3d at 1330 (quoting Rite-Hite Corp. v. Kelley Co., 56 F.3d 1538, 1548-49 (Fed. Cir. 1995) (en banc)). K-TEC has sold more than $10 million of the five-sided jar blending systems. (Sched. 10G of Jan. 15, 2010 Expert Report of Lance E. Gunderson (Ex. 7 to Vita-Mix's Mem. Supp.).) Demand for the patented product is also shown by demand for a product that "directly competes with the infringing device." DePuy Spine, 567 F.3d at 1330. Vita-Mix has sold almost $50 million worth of accused jar blending systems, of which $37 million in sales occurred after issuance of the '117 patent. (Sched. 6G of Jan. 15, 2010 Gunderson Report.)

These significant sales alone establish demand for the patented product. See BIC Leisure Prods., Inc. v. Windsurfing Int'l, Inc., 1 F.3d 1214, 1218-19 (Fed. Cir. 1993) ("evidence of sales of the infringing product may suffice to show Panduit's first factor").

Beyond sales of the patented and accused products, there is other evidence showing demand for the patented product. (See, e.g., Dep. of Scott Hinckley (Vita-Mix Director of Sales & Marketing) at 45-47, 112, 136-37, 141-42, 145-46; Dep. of Richard Galbraith (K-TEC Exec. V.P.) at 86-89, 95-97; Dep. of David Kolar (Sr. Engineer for Product Development at Vita-Mix) at 101; Dep. of David Barnard (former Vita-Mix Director of Engineering) at 44, 46; Dep. of Jonathan Katz (former Vita-Mix Director of Engineering) at 94-95.)

Vita-Mix claims there is no evidence that the five-sided jar configuration "actually improves blender performance." (Vita-Mix Mem. Supp. Mot. Summ. J. at 4.) Contrary to Vita-Mix's claim, the record contains evidence establishing that the jar configuration does improve blender performance.

For example, the patent establishes that the claimed invention improves blending performance. And Richard Galbraith testified that his test of the difference between the K-TEC four-sided jar (unpatented) and the patented five-sided jar showed a dramatic difference that impressed customers. (Galbraith Dep. at 86-88.) Vita-Mix's internal documents suggest that when Baskin-Robbins received the five-sided jar and began testing it, "they loved the equipment." (Internal Vita-Mix E-mail (Dec. 12, 2002) (Ex. 18 to K-TEC Mem. Opp'n).) Another Vita-Mix customer, Ruby Tuesday/Coke, reported that K-TEC's "Blendtec Easy Blend beat the s*#t out of the Vita-Mix." (Internal Vita-Mix e-mail (Jan. 30, 2003) (Ex. 26 to K-TEC Mem. Opp'n).) Caribou Coffee reported that K-TEC's five-sided jar significantly out-performed

Vita-Mix's prior art jar. (Internal Vita-Mix E-mail (May 10, 2002) (Ex. 24 to K-TEC Mem. Opp'n).) And Tropical Smoothie reported that the K-TEC five-sided jar "blends much faster." (Internal Vita-Mix E-mail (Nov. 21, 2002) (Ex. 25 to K-TEC Mem. Opp'n).) Furthermore, Scott Hinckley, Vita-Mix's Director of Sales and Marketing, reported Vita-Mix's own testing showing that the K-TEC five-sided jar "blows ours away," and that if Vita-Mix did not come up with a comparable product, it would lose every customer account. (Internal Vita-Mix E-Mail (May 10, 2002) (Ex. 24 to K-TEC Mem. Opp'n). See also May 16, 2003 Vita-Mix Press Release (Ex. 13 to K-TEC Mem. Opp'n) (in which Scott Hinckley attributed the solution to the cavitation problem to be the MP container).)

In sum, the above evidence of demand for the patented product (both the sales and its higher blending performance) is sufficient to overcome the motion for summary judgment.

ii. The Absence of Acceptable Non-Infringing Substitutes

The Federal Circuit recently articulated the "acceptable noninfringing substitutes" analysis in Cohesive Technologies, Inc. v. Waters Corporation, 543 F.3d 1351 (Fed. Cir. 2008):

> The mere existence of a competing device does not necessarily make that device an acceptable substitute. A product on the market which lacks the advantages of the patented product can hardly be termed a substitute acceptable to the customer who wants those advantages. Accordingly, if purchasers are motivated to purchase because of particular features available only from the patented product, products without such features - even if otherwise competing in the marketplace - would not be acceptable noninfringing substitutes.
>
> Thus, to prove that there are no acceptable noninfringing substitutes, the patent owner must show either that (1) the purchasers in the marketplace generally were willing to buy the patented product for its advantages, or (2) the specific purchasers of the infringing product purchased on that basis.

Id. at 1373 (internal citation omitted). "To be deemed *acceptable*, the alleged acceptable

noninfringing substitute must not have a disparately higher price than or possess characteristics significantly different from the patented product." Kaufman Co., Inc. v. Lantech, Inc., 926 F.2d 1136, 1142 (Fed. Cir. 1991).

When a defendant does not actually have a non-infringing substitute on the market during the relevant accounting period, the defendant bears "the burden of overcoming the inference of unavailability." DePuy Spine, 567 F.3d at 1331; see also Grain Processing, 185 F.3d at 1353 ("When an alleged alternative is not on the market during the accounting period, a trial court may reasonably infer that it was not available as a non-infringing substitute at that time."). And where there is evidence of a defendant's "unsuccessful attempt to develop a noninfringing" design, a reasonable jury could conclude that a non-infringing design would not have been available or acceptable. DePuy Spine, 567 F.3d at 1332.

Here, a reasonable jury could conclude there was an absence of acceptable non-infringing substitutes during the relevant infringement period on the basis that Vita-Mix did not have a non-infringing substitute on the market during the relevant accounting period. It is undisputed that Vita-Mix's initial response to K-TEC's five-sided jar in the marketplace was the development of the MP container, which the court has found is a direct copy of K-TEC's patented jar. Vita-Mix then created the XP container, which embodied an "invisible," "cosmetic" change that was "equal in performance" to the accused MP container.

Furthermore, the court finds that a reasonable jury could conclude that Vita-Mix's recent "Advanced Container" is not an acceptable non-infringing substitute. Vita-Mix's apparent inability to develop an acceptable non-infringing substitute over an extended period of time shifts the burden of overcoming the inference of unavailability to Vita-Mix. Id. at 1331.

This is not a case where Vita-Mix was surprised by a new product that addressed an unknown need. When Scott Hinckley began working for Vita-Mix in 1991, he asked for a blending jar that would avoid the cavitation problem. Vita-Mix's team of engineers worked hard to resolve the issue, but was unsuccessful. The only jars that did prevent cavitation were the accused jars. The length of time when Vita-Mix was aware of the long-standing industry-wide problem, the need for high performance commercial blending jars that did not cavitate, and an inability to produce one for a period of approximately nineteen years (from when Hinckley started in 1991 to the present) all create an inference of unavailability and the burden shifts to Vita-Mix to overcome that inference of unavailability.

The record also shows that Vita-Mix put a great deal of effort into designing around K-TEC's patent. When issuance of the '117 patent was imminent, Vita-Mix created fourteen different design-around containers, as well as the XP container. The design around options were of all different configuration geometries, which looked nothing like K-TEC's five-sided jar. However, some jars did not blend well and many of the jars cavitated. Only one was equal in performance: the XP container which embodied an "invisible" or "cosmetic" change from the MP container.

Vita-Mix's contention that Waring and Hamilton Beach are competitors in the general commercial market is not persuasive because it is not supported by any evidence that Hamilton Beach or Waring actually produced or sold competitively priced products that performed at the level of the patented jar and the accused product.

And the court is not persuaded by Dr. Neels' conclusion that the Miller patent is evidence of an acceptable non-infringing substitute. (See Neels Report at 10.) None of the blending jars

disclosed in Miller, including Figure 4, was ever commercialized because either it did not work or there was no market for it. (E.g., Hinckley Dep. at 82-88; Katz Dep. at 58-60.)

For all of the reasons set forth above, the court declines to grant summary judgment based on the Panduit factors.

2. Pre-Issuance Royalties

K-TEC alleges that certain Vita-Mix blending jars infringe the claims of '117 and '842 patents. Although the '117 patent issued on December 27, 2005, K-TEC contends that that was not the first time Vita-Mix became aware that K-TEC was seeking patent rights for a blending jar.

The application that led to the '117 patent was filed on September 23, 2004 ("the '682 application"), and later published on February 17, 2005 as U.S. Pub. No. 2005/0036401 ("the '401 publication"). The application that led to the '842 patent was filed on December 26, 2005 ("the '830 application"), and later published on August 3, 2006, as U.S. Pub. No. 2006/0171249 ("the '249 publication").

K-TEC seeks to recover a reasonable royalty for Vita-Mix's manufacture, use, sale, and offer to sell of blending jars that infringe the invention claimed in the '401 and '249 publications, from the time Vita-Mix was given notice of these publications until issuance of their corresponding patents. See 35 U.S.C. § 154(d)(1). Such damages are referred to as pre-issuance royalties, or "provisional rights."

To establish entitlement to pre-issuance royalties (also known as provisional rights), K-TEC must show essentially two things.

K-TEC must first establish that Vita-Mix had actual notice of the application for the

patent. 35 U.S.C. § 154(d)(1)(B) (a valid patent includes "the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent under section 122(b) . . . and ending on the date the patent is issued . . . had actual notice of the published patent application . . . ." (emphasis added). Actual notice is a question of fact for the jury. Loops, LLC v. Americare Prods., Inc., 636 F. Supp. 2d 1128, 1133 (W.D. Wash. 2008).

Then, K-TEC must show that the claims of the patent application are substantially identical to those in the patent. 35 U.S.C. § 154(d)(2) (providing that pre-issuance royalties are available only if "the invention as claimed in the patent is substantially identical to the invention as claimed in the published patent application.") (emphasis added).

Vita-Mix contends that K-TEC is not entitled to provisional rights because (1) K-TEC did not specifically plead a "provisional rights" damages theory; (2) K-TEC did not provide actual notice to Vita-Mix of the '401 published patent application before the '117 patent was issued; (3) the claims of the '401 published application are not substantially identical to the claims of the '117 patent; and (4) K-TEC has no evidence of the amount of pre-issuance royalty damages it claims to have suffered. The court disagrees.

First, K-TEC's Amended Complaint prays for relief for specifically identified damages as well as "such other and further relief as the Court may deem just and proper." (Am. Compl. Prayer For Relief ¶ g.) K-TEC's pleading satisfies the notice pleading requirements of Rule 8. See also Classen Immunotherapies, Inc. v. King Pharm., Inc., 403 F. Supp. 2d 451, 457 (D. Md. 2005) ("Section 154(d) . . . expands the scope of patent infringement rather than creating a new cause of action. . . . [A] claim for infringement includes the right to obtain" pre-issuance

royalties). Moreover, the fact that K-TEC is seeking pre-issuance royalties has been known to the parties for some time. Indeed, the existence and timing of Vita-Mix's purported knowledge of the '401 Publication has been a source of contentious discovery. (See, e.g., Pl.'s Mem. Supp. Mot. Compel Production (Docket No. 400) at 3-4, 14.) Accordingly, Vita-Mix's pleading argument is not well taken.

Second, Vita-Mix unpersuasively attempts to place a narrow construction on the statutory term "actual notice" by contending that it must take the form of a direct notification from K-TEC to Vita-Mix. Although written notice is certainly sufficient to satisfy the statutory requirement, the court does not read the statute's plain language to be so limited. See, e.g., Arendi Holding Ltd. v. Microsoft Corp., Slip Copy, Civ. No. 09-119-JJF-LPS, 2010 WL 1050177 at *7 (D. Del. Mar. 22, 2010) (holding that the term "actual notice" in § 154(d) did not require "that the patent applicant take an affirmative act to provide such notice to the alleged infringer (if the applicant can prove that the alleged infringer came to have actual notice through some other means).").

Evidence shows that Vita-Mix monitored the application which matured to the '117 Patent. (See, e.g., Dec. 9, 2005 e-mail from John Hoffa to Ray Seuffert (attached as Ex. 29 to Pl.'s Mem. Opp'n) (stating that "the patent that impacts our 'old style' MP container should be official either the 20th or 27th of this month.").) A reasonable jury could find that Vita-Mix was actually aware of the '401 publication at some point before the '117 Patent was issued. The question is when did Vita-Mix have actual notice of K-TEC's patent application? K-TEC has created a genuine issue of material fact concerning whether and when Vita-Mix had actual notice of the published patent application.

Third, evidence in the record supports the conclusion that the invention claimed in the

‘401 publication is substantially identical to the invention claimed in the ‘117 Patent. While narrowing amendments can preclude a finding that the claims are not “substantially similar,” “there is no per se rule that an amendment to a claim in order to overcome a PTO rejection based on prior art precludes finding valid provisional rights.” Pandora Jewelry, LLC v. Chamilia, LLC, 2008 WL 3307156 at *10 (D. Md. 2008). Indeed, if the substance of the claims stay the same, they are “identical.” See Tennant Co. v. Hako Minuteman, Inc., 878 F.2d 1413, 1417 (Fed. Cir. 1989) (finding that where claims amendments simply make the claim more definite, they are without substantive change).

Claim 20 as it appears in the ‘401 publication was amended two times before becoming allowed Claim 1 of the ‘117 Patent. The first amendment, which added “a movable blending member” to Claim 20, was submitted by supplemental preliminary amendment, not in response to any action from the United States Patent and Trademark Office (“PTO”). The second amendment was submitted after receiving a rejection from the PTO. Although the concept of corners being formed by the four side walls was already present in the claim, the amendment provided that the four side walls form “intersecting corners.” This amendment clarifies what was in the claim already–that corners are formed by the intersection of the side walls. See Tennant Co., 878 F.2d at 1417 (finding that “[b]ecause a second cannot exist without a first, common sense dictates that the claimed first wall section is also a bottom wall section” in holding that reexamination claim was “identical” to original claim).

And, finally, despite Vita-Mix’s claim, K-TEC has provided sufficient financial evidence to establish that it may be entitled to pre-issuance royalties. (See Gunderson Expert Reports.)

For all the foregoing reasons, the court denies Vita-Mix’s motion for summary judgment

concerning pre-issuance royalties.

3. Enhanced Damages For Willful Infringement

Whether a defendant's infringement was willful is a question of fact for the jury. i4i Ltd. Part. v. Microsoft Corp., 598 F.3d 831, 858-59 (Fed. Cir. 2010); ACCO Brands, Inc. v. ABA Locks Mfr. Co., Ltd., 501 F.3d 1307, 1311 (Fed. Cir. 2007). K-TEC has presented evidence from which a reasonable jury could find that Vita-Mix willfully infringed K-TEC's patents. Accordingly, Vita-Mix is not entitled to summary judgment on the issue of enhanced damages.

ORDER

For the reasons set forth above,

1. Vita-Mix Corporation's Motion to Strike (Docket No. 541) is DENIED AS MOOT.

2. Vita-Mix Corporation's Motion for Summary Judgment of No Lost Profits, Pre-Issuance Royalties and Enhanced Damages (Docket No. 473) is DENIED.

SO ORDERED this 24th day of May, 2010.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

K-TEC, INC., a Utah corporation, Plaintiff, vs. **VITA-MIX CORP.**, an Ohio corporation, Defendant.	**ORDER** Civil Case No. 2:06-CV-108 Chief Judge Tena Campbell Magistrate Judge Paul M. Warner

Having the reviewed the parties' Stipulated Motion regarding the deadline for the parties to file their objections to each party's damages expert's supplemental reports, including any motions to exclude, the Court hereby GRANTS the Motion. The Court hereby ORDERS that the parties shall file any necessary objections and/or motions to exclude relating to the foregoing by June 3, 2010.

IT IS SO ORDERED.

Dated this 24 day of May, 2010.

Chief Judge Tena Campbell
United States District Court

CALLISTER NEBEKER & McCULLOUGH
MARC L. TURMAN (11967)
JACOB D. LYONS (12161)
Zions Bank Building Suite 900
10 East South Temple
Salt Lake City, Utah 84133
Telephone: (801) 530-7300
Facsimile: (801) 364-9127

Attorneys for Plaintiff Angelo G. Wright

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

CENTRAL DIVISION

ANGELO G. WRIGHT, Plaintiff , vs. STATE OF UTAH, et. al., Defendants.	**SCHEDULING ORDER AND ORDER VACATING HEARING** Civil No. 06-cv-542 Judge Ted Stewart

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge[1] received the Attorneys' Planning Report filed by counsel (docket #77). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for 6/16/2010, 2010, at 10:30 AM is VACATED.

ALL TIMES 4:30 PM UNLESS INDICATED

1.	**PRELIMINARY MATTERS**	**DATE**
	Nature of claim(s) and any affirmative defenses:	
	Violation of Eighth Amendment Rights.	
a.	Was Rule 26(f)(1) Conference held?	*05/13/10*
b.	Has Attorney Planning Meeting Form been submitted?	05/13/10
c.	Was 26(a)(1) initial disclosure completed?	YES

2.	**DISCOVERY LIMITATIONS**	**NUMBER**
a.	Maximum Number of Depositions by Plaintiff(s)	10
b.	Maximum Number of Depositions by Defendant(s)	10
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	7
d.	Maximum Interrogatories by any Party to any Party	25
e.	Maximum requests for admissions by any Party to any Party	Unlimited
f.	Maximum requests for production by any Party to any Party	Unlimited

3.	**AMENDMENT OF PLEADINGS/ADDING PARTIES[2]**	**DATE**
a.	Last Day to File Motion to Amend Pleadings	07/15/10
b.	Last Day to File Motion to Add Parties	07/15/10

4. RULE 26(a)(2) REPORTS FROM EXPERTS[3]

a. Plaintiff 10/4/10

b. Defendant 10/4/10

c. Counter reports 11/4/10

5. OTHER DEADLINES

a. Discovery to be completed by:

Fact discovery 10/4/10

Expert discovery 01/4/11

b. *(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e) 09/01/10

c. Deadline for filing dispositive or potentially dispositive motions 02/4/11

d. Deadline for Plaintiff to file opposition to pending summary judgment motion 11/4/10

e. Deadline for Defendants to file reply in support of pending summary judgment motion 11/18/10

6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION

a. Referral to Court-Annexed Mediation *No*

b. Referral to Court-Annexed Arbitration *No*

c. Evaluate case for Settlement/ADR on 07/05/10

d. Settlement probability: Fair

7. TRIAL AND PREPARATION FOR TRIAL

a. Rule 26(a)(3) Pretrial Disclosures[4]

Plaintiff	**05/13/11**
Defendant	**05/27/11**

b. Objections to Rule 26(a)(3) Disclosures

(if different than 14 days provided in Rule)

				DATE
c.	Special Attorney Conference[5] on or before			**06/10/11**
d.	Settlement Conference[6] on or before			06/10/11
e.	Final Pretrial Conference		2:30 p.m.	06/27/11
f.	Trial	Length	Time	Date
	ii. Jury Trial	*5 days*	*8:30 a.m.*	*07/11/11*

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Signed May 22, 2010.

BY THE COURT:

David Nuffer
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

United States District Court

DISTRICT OF UTAH

UNITED STATES OF AMERICA

V.

ORDER OF DISCHARGE AND DISMISSAL

SUSAN M. TAYLOR

CASE NUMBER: 2:07-CR-00313-001-RTB

WHEREAS, the above-named defendant having previously been placed on probation under 18 U.S.C. § 3607 for a period not exceeding one year, and the Court having determined that said defendant has completed the period of probation without violation,

IT IS ORDERED that pursuant to 18 U.S.C. § 3607(a), the Court, without entry of judgment, hereby discharges the defendant from probation and dismisses those proceedings for which probation had been ordered.

R T Braithwaite

Robert T. Braithwaite
United States Magistrate Judge

5/24/2010

Date

PROB 12B

United States District Court
for the District of Utah

Request and Order for Modifying Conditions of Supervision With Consent of the Offender

(Waiver of hearing attached)

Name of Offender: **Angelo Michael Martinez** Docket Number: **2:07-CR-00399-001-TC**

Name of Sentencing Judicial Officer: **Honorable Tena Campbell**
Chief U.S. District Judge

Date of Original Sentence: **November 19, 2007**

Original Offense: **Bank Robbery**
Original Sentence: **30 Months Bureau of Prisons Custody/36 Months Supervised Release**

Type of Supervision: **Supervised Release** Supervision Began: **August 14, 2009**

PETITIONING THE COURT

[x] To modify the conditions of supervision as follows:

The defendant shall not use or possess alcohol, nor frequent businesses where alcohol is the chief item of order.

CAUSE

On May 17, 2010, the defendant was arrested by West Jordan City Police Officers for Driving Under the Influence of Alcohol and Possession of a Weapon (brass knuckles), both Class B Misdemeanors. The defendant reported the arrest to the U.S. Probation Office as required.

On May 20, 2010, an administrative staffing was held with the defendant and the U.S. Probation Officer. The defendant was admonished for his conduct and agreed with the proposed sanctions. The defendant is currently in mental-health treatment and substance-abuse treatment with Family Counseling Center, who will also be notified of the incident. Should the defendant's arrest result in a conviction, it is anticipated that the defendant will be required by the justice court to complete additional substance-abuse classes.

The defendant is currently employed full-time at Burger King, and he resides with his parents, who appear to be a positive support system. In addition to the random drug testing, the defendant will additionally be tested for alcohol consumption.

The above-requested special condition will assist both the defendant and the probation officer in deterring the defendant from further conduct deemed detrimental to his release.

I declare under penalty of perjury that the foregoing is true and correct.

Mary Schuman
U.S. Probation Officer
Date: May 21, 2010

THE COURT ORDERS:

[✓] The modification of conditions as noted above
[ ] No action
[ ] Other

Honorable Tena Campbell
Chief U.S. District Judge

Date: 5-24-2010

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
PROBATION AND PRETRIAL SERVICES OFFICE

WAIVER OF RIGHT TO HEARING PRIOR TO MODIFICATION OF CONDITIONS OF SUPERVISION

I have been advised by U.S. Probation Officer Mary Schuman that he/she has submitted a petition and report to the Court recommending that the Court modify the conditions of my supervision in Case No.2:07-CR-00399-001-TC. The modification would be:

> The defendant shall not use or possess alcohol, nor frequent businesses where alcohol is the chief item of order.

I understand that should the Court so modify my conditions of supervision, I will be required to abide by the new condition(s) as well as all conditions previously imposed. I also understand the Court may issue a warrant and revoke supervision for a violation of the new condition(s) as well as those conditions previously imposed by the Court. I understand I have a right to a hearing on the petition and to prior notice of the date and time of the hearing. I understand that I have a right to the assistance of counsel at that hearing.

Understanding all of the above, I hereby waive the right to a hearing on the probation officer's petition, and to prior notice of such hearing. I have read or had read to me the above, and I fully understand it. I give full consent to the Court considering and acting upon the probation officer's petition to modify the conditions of my supervision without a hearing. I hereby affirmatively state that I do not request a hearing on said petition.

Angelo Michael Martinez

5/20/2010
Date

Witness: Mary Schuman
U.S. Probation Officer

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

CLEARONE COMMUNICATIONS, INC., Plaintiff, vs. ANDREW CHIANG; et al., Defendants, DONALD BOWERS; et al., Interested Third Parties.	ORDER Case No. 2:07-CV-37-TC-DN

At 4:45 p.m. Mountain Daylight Time, on Monday, May 24, 2010, attorneys Randolph Frails and Jeffrey L. Silvestrini filed an Expedited Joint Motion to Withdraw as Counsel for the WideBand Defendants and Interested Third Parties. The motion was filed with only two days remaining before the court's long-scheduled contempt proceedings which are to be held on Thursday, May 27, 2010, at 10:00 a.m. The court has already denied one request for a continuance. Now this motion. The court finds that allowing the attorneys to withdraw as counsel for the WideBand Defendants and Interested Third Parties at this point would be irresponsible. Moreover, the court views the motion as another tactic to stall the upcoming contempt proceedings. Accordingly, the motion to withdraw (Docket No. 2197) is DENIED.

SO ORDERED this 24th day of May, 2010.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
Chief Judge

Russell T. Monahan USB No. 9016
Stephen W. Cook USB No. 0720
COOK & MONAHAN, P.C.
Attorneys for Plaintiff
230 South 500 East, Suite 465
Salt Lake City, Utah 84102
Telephone: (801) 595-8600
Telefax: (801) 595-8614
E-Mail: Russ@cooklawfirm.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

FARHAN MOHAMMED Plaintiffs, vs. DAVIS COUNTY, ET AL Defendants.	**ORDER GRANTING EXTENSION** Civil No: 2:07cv00637 Judge: Clark Waddoups Magistrate:

Based upon the Parties' Stipulated Motion, and for good cause shown,

IT IS HEREBY ORDERED that the Plaintiff is granted an extension of time in which to file a Response to Defendants' Motion for Summary Judgment until May 28, 2010.

DATED this 21st day of May 2010.

BY THE COURT

U.S. DISTRICT COURT JUDGE

WOOD CRAPO LLC
Mary Anne Q. Wood #3539
Kathryn O. Balmforth #5659
60 E. South Temple, Suite 500
Salt Lake City, Utah 84111
Telephone: (801) 366-6060

Todd R. McFarland
GENERAL CONFERENCE OF
SEVENTH-DAY ADVENTISTS
12501 Old Columbia Pike
Silver Spring, Maryland 20904-6600
Telephone: (301) 680-6321

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

WILLIE LEE ELLINGTON, Plaintiff, v. MURRAY ENERGY CORPORATION, an Ohio corporation; UTAHAMERICAN ENERGY, INC., a Utah corporation; WEST RIDGE RESOURCES, INC., a Utah corporation; and DOE DEFENDANTS I through V, Defendants.	)	***ORDER GRANTING EXTENSION OF TIME TO FILE REPLY MEMORANDUM*** Civil No. 2:07-CV-00766 DAK BCW Judge Dale A. Kimball Magistrate Judge Brooke C. Wells

Currently before the Court is Plaintiff Willie Ellington's Motion for Extension of Time to File Reply Memorandum, seeking three additional days to file said memorandum.

Having reviewed the Motion, and good cause appearing therefor,

IT IS HEREBY ORDERED that Mr. Ellington shall have until Thursday, May 27, 2010, to file his Reply Memorandum in Support of Plaintiff's Motion for Spoliation Sanctions.

DATED this 24th day of May, 2010.

BY THE COURT:

Honorable Brooke C. Wells
United States District Court

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. BRIAN DAVID MITCHELL, Defendant.	**ORDER GRANTING EXTENSION OF TIME FOR FILING DEFENDANT'S MOTION FOR CHANGE OF VENUE** Case No. 2:08 CR 125 DAK Honorable Dale A. Kimball

Based upon motion of Defendant, Brian David Mitchell, stipulation of the government, and good cause appearing therefore;

IT IS HEREBY ORDERED that the deadline for filing Defendant's motion for change of venue and memorandum in support is extended from May 26, 2010, until **June 11, 2010**.

IT IS FURTHER ORDERED that Plaintiff's response brief will be due **June 25, 2010**, and Defendant's reply brief will be due **July 2, 2010.**

DATED this 24th day of May, 2010.

BY THE COURT:

Dale A. Kimball

HONORABLE DALE A. KIMBALL
United States District Court Judge

JOHN R. LUND (4368)
MURRY WARHANK (11792)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Defendant
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000
Facsimile: (801) 363-0400

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

ALEX BANKHEAD,

Plaintiff,

vs.

FIRE INSURANCE EXCHANGE,

Defendant.

ORDER CANCELLING HEARING

Case No. 2:08-cv-00312

Judge Tena Campbell
Magistrate Judge David Nuffer

Upon the stipulation and motion of counsel for plaintiff and counsel for defendant and for good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the hearing on this matter previously scheduled for Thursday, the 27th day of May, 2010, at 3:00 p.m. is cancelled.

DATED this 24 day of May, 2010.

BY THE COURT:

Tena Campbell

Honorable Tena Campbell
U.S. District Court, Chief Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

SUSAN ROBINSON, Plaintiff, vs. SUNROC CORPORATION and CLYDE COMPANIES, INC., Defendants.	ORDER AND MEMORANDUM DECISION Case No. 2:08-CV-437 TC

Plaintiff Susan Robinson alleges that her former employer, Sunroc Corporation, and its parent Clyde Companies (together "Sunroc"), violated Title VII of the Civil Rights Act of 1964, the Family Medical Leave Act (FMLA), and the Equal Pay Act. Specifically, Ms. Robinson alleges that Sunroc discriminated against her based on her gender, did not respond adequately to her complaints of discrimination by a coworker and others, retaliated against her after she complained about the discrimination, failed to advise her of her rights under the FMLA, and paid her less than it paid male employees for the same work.

Arguably the most egregious harassment Ms. Robinson suffered was at the hands of a welder named German Paladini. Mr. Paladini worked on a job site with Ms. Robinson, but was not employed by Sunroc. Mr. Paladini asked Ms. Robinson to date and have sex with him, physically cornered her on the job site, jumped uninvited into her truck, and slipped a disturbing love note in her pocket. As a result of Mr. Paladini's harassment, Sunroc transferred Ms.

Robinson to a different job site and complained to Mr. Paladini's employer.

According to Sunroc, its response to Mr. Paladini's harassment was by law reasonable–shielding it from Title VII liability for any hostile work environment created by Mr. Paladini. Sunroc also claims that the other grounds for Ms. Robinson's Title VII sexual discrimination claim, and her other causes of action, fail as a matter of law. For the reasons set forth below, the court agrees, and grants Sunroc's motion for summary judgment.

BACKGROUND

Ms. Robinson alleges or does not dispute the following facts:

Employment at H.E. Davis/Sunroc

Ms. Robinson began working as a laborer at H.E. Davis (which later merged with Sunroc[1]) on May 9, 2005. In mid-December 2005, when work slowed down for the winter, Ms. Robinson's employment was terminated; but two months later, when warm weather arrived and work increased, Ms. Robinson was rehired by Sunroc.

At Sunroc, Ms. Robinson performed the same basic laborer duties she had performed at H.E. Davis, but she also started learning to operate new equipment. In April 2006, Sunroc raised Ms. Robinson's pay from $10/hour to $11.50/hour, and in July 2006, Sunroc raised Ms. Robinson's pay again, from $11.50/hour to $12/hour. Sunroc terminated Ms. Robinson's employment in mid-December 2006.

Harassment at Various Job Sites

As a Sunroc employee, Ms. Robinson worked at job sites where Sunroc was one of multiple subcontractors working at the site. In the spring of 2006, six workers at various job

[1] Sunroc provides construction services and related products.

sites where Ms. Robinson worked requested her phone number or made comments to her about "going out," "hooking up," or having sex. Most of those workers stopped bothering her after she told them that she did not want to go out with them. All but one were employees of other subcontractors.

In about the third week of April 2006, Ms. Robinson went to her supervisors and told them "this is nuts" and asked them to do something. One Sunroc supervisor told another employee to tell the workers to leave Ms. Robinson alone. Ms. Robinson does not recall being bothered by most of these workers after mid-April 2006.

Harassment by German Paladini

Beginning around April 17, 2006, a welder named German Paladini, an employee of a different subcontractor working on the construction site where Ms. Robinson was working, began making lewd jokes, using crude language, repeatedly asking Ms. Robinson to date and have sex with him and physically cornering her. Ms. Robinson complained to her supervisor about this behavior (but did not mention Mr. Paladini by name) around April 19, 2006. Her supervisor said he would check into it. Ms. Robinson cannot recall any specific instances of Mr. Paladini bothering her between April 19, 2006, and April 27, 2006.

Around April 27, 2006, after Mr. Paladini jumped into Ms. Robinson's truck uninvited, Ms. Robinson again complained to a supervisor, this time saying that Mr. Paladini was "psycho" and would not leave her alone. Ms. Robinson's supervisor, in what he describes as an attempt to make her feel good, told her that if she weren't so pretty, men wouldn't ask her out. He also told her to hang in there and he would try to do something.

Later in April 2006, Mr. Paladini put a note in Ms. Robinson's pocket that said: "If

seeing you was meaning of life, and not seeing you was meaning of dyeing [sic], I prefer to die and see you than to live and not have you . . . ." (Mem. Opp'n Mot. Summ. J. ¶ 48.) That was the last time Ms. Robinson had any interaction with Mr. Paladini. Ms. Robinson requested a transfer, and Sunroc supervisor Randy Diamond immediately reassigned Ms. Robinson to another job site away from Mr. Paladini. Sunroc also complained to Mr. Paladini's employer, who suspended Mr. Paladini. The afternoon she was transferred, Sunroc's Safety Director told Ms. Robinson to contact him if she had any more problems with Mr. Paladini. After her transfer on May 1, 2006, the sexual harassment Ms. Robinson had been experiencing stopped.

No Bathrooms on New Job Site

There were no bathrooms on the new work site. Because there were several subcontractors working on lots surrounding the Sunroc job, there were many bathrooms within walking distance. And, with the understanding that the job would be completed in one month, Sunroc supervisor Stan Davis decided, before Ms. Robinson's transfer, not to put any bathrooms on the Sunroc site. When Ms. Robinson asked for permission to leave the site to use the restroom, she did not experience any problems.

Steel-Drum Roller at New Job Site

While on the new job site, Ms. Robinson was given a steel-drum roller (made for rolling asphalt) instead of a rubber-wheeled roller (made for rolling dirt). Because the steel-drum roller was not the appropriate tool for the dirt she was rolling, using the roller hurt her back.

Hospitalization/Leave

Ms. Robinson worked at the new site for six or seven days and then developed a kidney infection for which she was hospitalized. She was out on leave from May 9, 2006, to May 23,

2006. She was ultimately paid for the time she spent on leave by worker's compensation insurance.

December 2006 Employment Termination

In December 2006 (one year after her last winter layoff), Sunroc terminated Ms. Robinson's employment. Sunroc did not terminate the employment of a male employee named Shawn Shepherd. Blake Bradford, the Sunroc supervisor who terminated Ms. Robinson's employment but decided not to terminate Mr. Shepherd's employment, knew that Mr. Shepherd had more experience laying pipe than Ms. Robinson, and that Mr. Shepherd was already laying pipe on an ongoing project.

Settlement Offer

As part of a confidential EEOC mediation in February 2007, Sunroc offered a settlement proposal to Ms. Robinson. One of the proposed terms of the settlement was that Ms. Robinson agree to give up any claim to current or future employment at Sunroc. Ms. Robinson did not accept Sunroc's proposal.

Offer of Re-Employment

In March 2007, Ms. Robinson was offered re-employment with the same job she had in December 2006 (including the same duties, hours, and pay). Ms. Robinson did not accept Sunroc's March 2007 job offer.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if "there is no genuine issue as to any material fact and . . . the movant is entitled to judgment as a matter of law." Fed. R. Civ. P 56(c). In deciding a motion for summary judgment, "[t]he evidence of the non-movant is to be believed, and all

justifiable inferences are to be drawn in his favor." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). But "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

ANALYSIS

TITLE VII SEXUAL DISCRIMINATION CLAIM

Under Title VII, it is unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex . . . ." 42 U.S.C. § 2000e-2(a)(1). Ms. Robinson alleges that she was discriminated against because of her sex in violation of Title VII when Sunroc terminated her employment in December 2006; when, for six or seven days, Sunroc did not provide an onsite bathroom after Ms. Robinson's transfer; and when Sunroc did not respond adequately to the harassment suffered by Ms. Robinson during the spring of 2006.

Discriminatory Discharge

The court applies the McDonnell Douglas three-part burden-shifting analysis to Ms. Robinson's sexual discrimination claim alleging discriminatory discharge. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Ms. Robinson claims to have met her prima facie burden by providing evidence that (a) she belongs to a protected class; (b) she was qualified to perform her job; (c) despite her qualifications, she was discharged; and (d) the job was not eliminated after her discharge. (See Mem. Opp'n Mot. Summ. J. at 36-37.) See also Perry v. Woodward, 199 F.3d 1126, 1135 (10th Cir. 1999). However, the only evidence that Ms.

Robinson provides to show that her job was not eliminated after her discharge is that, about a month before her discharge, a manager said that Sunroc would have winter work, and that soon after her discharge, Sunroc ran an ad in the Salt Lake Tribune and in the Deseret News advertising the same job as the one from which Ms. Robinson was let go.

Assuming that Ms. Robinson has set forth a prima facie case, the burden of production shifts to Sunroc to articulate a legitimate, nondiscriminatory reason for the termination of Ms. Robinson's employment. See Pinkerton v. Colo. Dep't of Transp., 563 F.3d 1052, 1064 (10th Cir. 2009). According to Sunroc, the winter work did not materialize, the ads were placed in advance, and Mr. Shepherd, who had more pipe-laying experience than Ms. Robinson, was already working on an ongoing pipe-laying project. Because Sunroc has met its burden of production, summary judgment is warranted unless Ms. Robinson can show that there is a genuine issue of material fact as to whether the reasons for the termination of Ms. Robinson's employment proffered by Sunroc are pretextual. See id.

"Under McDonnell Douglas, our role isn't to ask whether the employer's decision was wise, fair or correct, but whether it honestly believed the legitimate, nondiscriminatory reasons it gave for its conduct and acted in good faith on those beliefs." Johnson v. Weld County, Colo., 594 F.3d 1202, 1211 (10th Cir. 2010) (quotations omitted). To show that Sunroc's purported reasons for terminating Ms. Robinson's employment were a pretext to hide its discriminatory motives, Ms. Robinson points to evidence that some of the eight male laborers whose employment was terminated at the same time Ms. Robinson's employment was terminated actually wanted to return to Mexico for the winter. She also points to the earlier statement made by a supervisor that there would be winter work, which, if that work had panned out, would have

obviated the need for employment terminations. But even if a supervisor thought that there would be winter work and even if some of the male employees wanted to have their employment terminated so they could return to Mexico, that evidence is not enough for a rational trier of fact to find that Sunroc's proffered reasons for discharging Ms. Robinson are pretextual.

No Bathrooms on New Job Site

To recover for a Title VII claim of sex discrimination based on a hostile work environment, "a plaintiff must show (1) that she was discriminated against because of her sex; and (2) that the discrimination was sufficiently severe or pervasive such that it altered the terms or conditions of her employment and created an abusive working environment." Pinkerton, 563 F.3d at 1058 (quoting Medina v. Income Support Div., 413 F.3d 1131, 1134 (10th Cir. 2005)).

It is undisputed that the decision not to have any onsite bathrooms was made to save money; that the decision was made before there were any female employees working on the site; that there were bathrooms available on other job sites nearby; and that in the year and a half Ms. Robinson worked for H.E. Davis/Sunroc, she was only without an onsite bathroom for six or seven days. Ms. Robinson argues that not having an onsite bathroom is more of a burden to a female construction worker than it is to a male construction worker. But Ms. Robinson cannot show, as she would need to at trial, that not having an onsite bathroom was the result of sexual discrimination or that not having an onsite bathroom for one week altered the terms or conditions of her employment and created an abusive working environment.

Spring 2006 Harassment

An employer may be held liable for harassment by employees (when they act without apparent authority and outside the scope of their employment), and by non-employees, only when

the employer is negligent, that is when the employer fails to remedy harassment that it knows or should know about. See Lockard v. Pizza Hut, Inc., 162 F.3d 1062, 1074 (10th Cir. 1998); Adler v. Wal-Mart Stores, 144 F.3d 664, 673 (10th Cir. 1998). "[T]he employer's liability for allowing a sexually hostile work environment after it is reported to the employer by the employee arises only if the employer fails to take adequate remedial and preventative responses to any actually or constructively known harassment." Holmes v. State of Utah, Dep't of Workforce Servs., 483 F.3d 1057, 1069 (10th Cir. 2007).

The "touchstone for evaluation of an employer's response . . . is reasonableness," which is whether the employer's action was "reasonably calculated to end the harassment." Adler, 144 F.3d at 676-77. "A stoppage of harassment shows effectiveness, which in turn evidences such reasonable calculation." Id. at 676. The plaintiff bears the burden of bringing to the trial court's attention sufficient evidence to establish the essential element for employer liability: that the employer inadequately responded to incidents of harassment of which it knew or should have known. See id. at 677. And "[a] court may determine on summary judgment whether an employer's responses to claims of sexual harassment were reasonable as a matter of law." Holmes, 483 F.3d at 1069.

In this case, Ms. Robinson requested and was given a transfer to another job site soon after she complained about the harassment. After Ms. Robinson was transferred the harassment stopped. Sunroc also complained to Mr. Paladini's employer, which then suspended him. Although the reasonableness analysis may have been different had the harassing employees been

largely Sunroc employees, in this case Sunroc's response was reasonable as a matter of law.[2]

TITLE VII RETALIATION CLAIM

Title VII contains an anti-retaliation provision that prohibits an employer from discriminating against an employee because that employee "has opposed any practice made an unlawful employment practice" by Title VII or because the employee has participated in an investigation, proceeding or hearing under Title VII. 42 U.S.C. § 2000e-3(a); see Pinkerton v. Colo. Dep't. of Transp., 563 F.3d 1052, 1064 (10th Cir. 2009). Because Ms. Robinson seeks to prove her Title VII retaliation claim through indirect or circumstantial evidence, the court applies the burden-shifting framework of McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Id.

"To establish a prima facie case of retaliation, a plaintiff must demonstrate (1) that [s]he engaged in protected opposition to discrimination, (2) that a reasonable employee would have found the challenged action materially adverse, and (3) that a causal connection existed between the protected activity and the materially adverse action." Id. (quoting Argo v. Blue Cross & Blue Shield of Kan., Inc., 452 F.3d 1193, 1202 (10th Cir. 2006)).

To a reasonable employee, a challenged action is materially adverse if the action "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 68 (2006) (quotations omitted).

In her complaint, Ms. Robinson alleges that:

> Sunroc engaged in retaliatory practices in violation of Section 704(a) of Title VII, including but not limited to intentionally creating a hostile work environment,

[2] Because the court disposes of this claim based on the absence of employer liability, it need not address the issue of the presence of a hostile work environment. See Adler, 144 F.3d at 673.

> alienating Ms. Robinson from her colleagues and criticizing her work performance. The retaliatory practices by Sunroc in Ms. Robinson's situation of employment were intolerable. As a result of the retaliation, Ms. Robinson suffered an adverse employment action; she was laid off or terminated from her employment at Sunroc.

(Compl. ¶¶ 47-48.) However, Ms. Robinson has provided no evidence to support her claim that Sunroc intentionally created a hostile work environment, or that Sunroc alienated Ms. Robinson from her colleagues or criticized her work performance.

In her opposition brief to Sunroc's motion for summary judgment, Ms. Robinson does not make any argument regarding her retaliation claim, although she admits in the fact section that her retaliation claim is based on the following: that she was not provided a bathroom at the job site she was tranferred to; that she was not given a proper roller to use at that job site; that she was moved from the job site where she was sexually harassed; that her employment was terminated; and that she was told she would not be offered employment during the EEOC mediation. The court will analyze each of these allegedly retaliatory actions in turn.

No Bathrooms on New Job Site

Ms. Robinson admits that the unavailability of a bathroom while she was on the site to which she was transferred was "in no way related to [her]." (Mem. Opp'n Mot. Summ. J. ¶ 69.) Although she claims that the situation was a violation of OSHA regulations and that it affected her more than it the men at the site (id.), Ms. Robinson has provided no evidence of a causal connection between her sexual harrasment complaints and not having a bathroom on site, and in fact she admits that there is no such connection. Ms. Robinson has not established a prima facie case of retaliation related to the absence of an onsite bathroom.

Steel-Drum Roller at New Job Site

Ms. Robinson alleges that when she was transferred, she was given the wrong roller to operate and that using it hurt her back. The only link between being given the wrong roller and her discrimination claim is the temporal proximity to her complaints. But Ms. Robinson's supervisor, Mr. Davis, told Ms. Robinson that Sunroc wanted to try the new roller before they bought it, and Ms. Robinson has no evidence that that explanation is pretextual. Further, Sunroc employee Mike Reeder assigned Ms. Robinson to use the roller, and Ms. Robinson does not think that Mr. Reeder was retaliating against her. (Mem. Opp'n Mot. Summ. J. ¶¶ 73-74.)

Job Site Transfer

Because transferring Ms. Robinson, at her request, was a reasonable response to the situation (see above), as a matter of law the transfer was not retaliatory. Additionally, Ms. Robinson admits that she thought Sunroc supervisor Randy Diamond was trying to help her when he agreed to move her to another site. (Mem. Opp'n Mot. Summ. J. ¶ 63.)

Employment Termination

Ms. Robinson first complained that she was being sexually harassed in April 2006. She was hospitalized with a kidney infection in May 2006. And she was laid off in December 2006. Ms. Robinson alleges that she told the supervisor who terminated her employment, Mr. Bradford, in September 2006 that she had filed a sexual harassment claim against Sunroc. (Id. ¶ 83.) According to Ms. Robinson, Mr. Bradford did not seem angry or upset; he told her: "If you have any problems like that come to me." (Id. ¶ 84.) Although Ms. Robinson suggests that Mr. Bradford laid her off in retaliation for her claim against Sunroc, Ms. Robinson has no evidence to that effect and the timing does not support a retaliation claim. As a result, Ms. Robinson has not

established a prima facie case of retaliation regarding her layoff.

Further, had Ms. Robinson established a prima facie case, she still could not rebut Sunroc's alleged legitimate, nondiscriminatory reason for terminating her employment: that work slowed during the winter as it had when Ms. Robinson's employment was terminated by Sunroc in December 2005. Ms. Robinson says that around a month before her employment was terminated, a manager said that Sunroc would have winter work, but Ms. Robinson does not know if there was actually enough winter work to make the layoff unnecessary.

In addition, although Sunroc ran an advertisement in the Salt Lake Tribune and the Deseret News advertising Ms. Robinson's same job, both Stan Davis (Sunroc supervisor of superintendents) and Mr. Bradford testified at their depositions that ads are usually run in advance, anticipating Sunroc's future staffing needs. According to Mr. Davis, "if it advertised the end of January, so it probably would have been the first of March before we was really hiring back." (Davis Dep. at 54:11-13 (attached as Ex. E to Mem. Further Supp. Mot. Summ. J.); see also Bradford Dep. at 65:9-66:7 (attached as Ex. 4 to Mem. Opp'n Mot. Summ. J.).)

And Sunroc offered to re-hire Ms. Robinson in March 2007. (Mem. Opp'n Mot. Summ. J. ¶ 26.) Without any proof of retaliatory motive or evidence of dishonesty, no rational trier of fact could find that Sunroc's proffered explanation for terminating Ms. Robinson's employment was pretextual.

EEOC Settlement Offer

During an EEOC mediation, Sunroc offered a settlement proposal, which included as one of its terms that Ms. Robinson give up any claim to current or future employment at Sunroc. Although Ms. Robinson claims that this offer was retaliatory, it is axiomatic that an offer of

settlement is not a materially adverse action because, by definition, an offer of settlement is one that the employee can accept or reject. In this case, Ms. Robinson rejected Sunroc's offer and, shortly thereafter, she was offered re-employment by Sunroc.

FAMILY MEDICAL LEAVE ACT CLAIM

Under the Family and Medical Leave Act (FMLA), an eligible employee with a serious health condition that makes the employee unable to perform her job functions is entitled to twelve weeks of unpaid leave each year. See 29 U.S.C. § 2612(a)(1)(D). Ms. Robinson alleges that, in violation of the FMLA, Sunroc did not designate Ms. Robinson's leave as FMLA leave and that Sunroc did not provide Ms. Robinson with an individualized notice of her FMLA rights. (Compl. ¶¶ 56-57.)

To be eligible for leave under the Family and Medical Leave Act, an employee must have been employed "for at least 12 months by the employer with respect to whom leave is requested . . . ." 29 U.S.C.A. § 2611(2)(A)(I); 29 U.S.C.A. § 2612. Ms. Robinson alleges that she did not get proper notice of her FMLA rights while she was ill in May 2006. But Ms. Robinson had worked for Sunroc for under eleven months in May 2006.[3] That Ms. Robinson may have become eligible for leave under the FMLA by the time her employment was terminated is irrelevant; it would be nonsensical to allow a plaintiff to retroactively support an FMLA claim because at some point after the alleged violation she became eligible for FMLA leave.[4]

Additionally, "[t]o determine whether damages and equitable relief are appropriate under

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[3] Ms. Robinson was employed by H.E. Davis (another Clyde subsidiary) for seven months, from May 10, 2005, to December 9, 2005. She was re-hired by Sunroc on February 9, 2006. She took leave from May 9, 2006, to May 23, 2006, because of her kidney infection.

[4] Ms. Robinson cites no authority to support the court's consideration of post-violation eligibility.

the FMLA, the judge or jury must ask what steps the employee would have taken had circumstances been different . . . ." Ragsdale v. Wolverine World Wide, Inc., 535 U.S. 81, 91 (2002). In this case, Ms. Robinson admits that, when she was ill in May 2006, she took all of the time off work that she needed. (See Mem. Opp'n Mot. Summ. J. ¶ 100.) That Ms. Robinson was not an eligible employee under the FMLA at the time of the alleged violations and that there is no evidence that Ms. Robinson was prejudiced by Sunroc's actions are independent bases for the court to grant summary judgment in favor of Sunroc on Ms. Robinson's FMLA claim.

EQUAL PAY ACT CLAIM

The Equal Pay Act mandates that "[n]o employer . . . shall discriminate . . . between employees on the basis of sex by paying wages to employees . . . at a rate less than the rate at which he pays wages to employees of the opposite sex . . . for equal work," except where the disparity is based on non-discriminatory considerations. 29 U.S.C. § 206(d)(1). Ms. Robinson alleges that despite having been trained on the job as an equipment operator, she was paid less than Sunroc's male equipment operators.

To maintain an Equal Pay Act claim, "the plaintiff must establish a prima facie case of discrimination by demonstrating that employees of the opposite sex were paid differently for performing substantially equal work." Mickelson v. New York Life Ins. Co., 460 F.3d 1304, 1311 (10th Cir. 2006). Only after the plaintiff has established her prima facie case does the burden of persuasion shift to the defendant to prove that the wage disparity was justified under the act. Id.

Although Ms. Robinson suggests that male equipment operators who performed the same type of work as Ms. Robinson were paid more than she was paid, she has provided no evidence

to that effect.[5] Accordingly, Ms. Robinson has not made out a prima facie case of discrimination under the Equal Pay Act, and the court grants summary judgment to Sunroc on Ms. Robinson's Equal Pay Act claim.

ORDER

For the foregoing reasons, Sunroc's motion for summary judgment (Docket No. 56) is granted.

SO ORDERED this 24th day of May, 2010.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
Chief Judge

[5] Ms. Robinson did not depose Sunroc's Human Resources Manager, whose uncontroverted testimony is that "[t]he average hourly wage rate for male laborers and labor/operators employed by Sunroc as of August 2006 (when Robinson filed her EEOC charge) was $11.63/hour," while Ms. Robinson was paid $12/hour. (Sapp Aff. ¶ 7, attached to Mem. Supp. Mot. Summ. J.)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JUSTIN GUYMAN, Plaintiff, v. UTAH STATE PRISON et al., Defendants.	**ORDER GRANTING MOTION** Case No. 2:08-CV-693 DB District Judge Dee Benson

Plaintiff's motion for a ninety-day extension of time in which to file an amended complaint is GRANTED. (*See* Docket Entry # 23.) The amended complaint is due September 4, 2010.

DATED this 24th day of May, 2010.

BY THE COURT:

Dee Benson

DEE BENSON
United States District Judge

Julianne P. Blanch (Utah State Bar No. 6495)
Tammy B. Georgelas (Utah State Bar No. 9972)
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000
Facsimile: (801) 363-0400
Email: intake@scmlaw.com

Attorneys for Defendant Daniels Summit Lodge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

MEIKE FREUND, an individual, Plaintiff, vs. DANIELS SUMMIT LODGE, LC, a Utah limited liability company, Defendant.	**ORDER OF DISMISSAL WITH PREJUDICE** Case No. 2:08-cv-00742-TC District Judge Tena Campbell

In accordance with the Stipulation and Joint Motion for Dismissal with Prejudice signed by counsel for the parties, and for good cause appearing, it is hereby

ORDERED that the above-entitled action be and the same is hereby dismissed with prejudice, each party to bear their own costs and attorneys' fees.

DATED this 21st day of May, 2010.

BY THE COURT:

Tena Campbell

Judge Tena Campbell
United States District Court Judge

Approved as to Form:

Gainer Waldbillig
Attorneys for Plaintiff Meike Freund

Christopher G. McAnany (7933)
Dufford, Waldeck, Milburn & Krohn, LLP
744 Horizon Court, Suite 300
Grand Junction, CO 81506
(970) 241-5500
(970) 243-7738 - Facsimile
mcanany@dwmk.com

IN THE UNITED STATES DISTRICT COURT,
DISTRICT OF UTAH, CENTRAL DIVISION

EMERY RESOURCE HOLDINGS, LLC, a
Utah limited liability company,
Plaintiff, Case No. 2:08-CV-907

v.

COASTAL PLAINS ENERGY, INC., a
Texas corporation,
Defendant.

SCHEDULING ORDER AND ORDER VACATING HEARING

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge[i] received the Attorneys' Planning Report filed by counsel (docket #40). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for *June 16*, 2010, at 11:30 a.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

		PRELIMINARY MATTERS	**DATE**
1.		Nature of claims and any affirmative defenses:	
	a.	Was Rule 26(f)(1) Conference held?	05/05/2010
	b.	Has Attorney Planning Meeting Form been submitted?	05/14/2010
	c.	Was 26(a)(1) initial disclosure completed?	06/25/2010
2.		**DISCOVERY LIMITATIONS**	**NUMBER**
	a.	Maximum Number of Depositions by Plaintiff(s)	*15*
	b.	Maximum Number of Depositions by Defendant(s)	15
	c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	*7*

d.	Maximum Interrogatories by any Party to any Party		*40*
e.	Maximum requests for admissions by any Party to any Party		*No Limit*
f.	Maximum requests for production by any Party to any Party		*No Limit*

g. Discovery of electronically stored information should be handled as follows: To the extent practicable, discovery will be exchanged electronically via CD Rom or other suitable electronic medium.

h. Claim of privilege or protection as trial preparation material asserted after production shall be handled as follows: *Include provisions of agreement to obtain the benefit of Fed. R. Evid. 502(d).:* The parties will maintain privilege logs for all documents asserted to be protected by attorney/client privilege and/or the work product doctrine. Privileged documents which are inadvertently disclosed shall not result in a waiver of the privilege, provided that the disclosing party promptly alerts the receiving party of the problem and requests return of the document(s).

3.	**AMENDMENT OF PLEADINGS/ADDING PARTIES**[ii]		**DATE**
a.	Last Day to File Motion to Amend Pleadings		*P10/15/10* *D 11/01/10*
b.	Last Day to File Motion to Add Parties		P 10/15/10 D 11/01/10
4.	**RULE 26(a)(2) REPORTS FROM EXPERTS**[iii]		**DATE**
a.	Plaintiff		*04/01/2011*
b.	Defendant		05/02/2011
c.	Counter reports		*05/16/2011*
5.	**OTHER DEADLINES**		**DATE**
a.	Discovery to be completed by:		
	Fact discovery		*03/15/2011*
	Expert discovery		*06/15/2011*
b.	*(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)		*40 days before trial*
c.	Deadline for filing dispositive or potentially dispositive motions		*07/15/2011*
6.	**SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION**		**DATE**
a.	Referral to Court-Annexed Mediation:	*Yes*	
b.	Referral to Court-Annexed Arbitration	*No*	
c.	Evaluate case for Settlement/ADR on		*10/01/2010*
d.	Settlement probability:		*Unknown at this time.*
7.	**TRIAL AND PREPARATION FOR TRIAL**	**TIME**	**DATE**
a.	Rule 26(a)(3) Pretrial Disclosures[iv]		
	Plaintiff		*11/18/11*
	Defendant		*12/01/11*
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)		*14 days*

c.	Special Attorney Conference[v] on or before		*12/16/11*
d.	Settlement Conference[vi] on or before		*12/16/11*
e.	Final Pretrial Conference	2:30 p.m.	*01/09/12*
f.	Trial	Length	
	i. Bench Trial	*# days*	___:__ _.m. *00/00/00*
	ii. Jury Trial	*6 days*	8:30 a.m. *01/23/12*

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

May 22, 2010.

BY THE COURT:

David Nuffer
U.S. Magistrate Judge

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[i] The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately assigned or referred to that Magistrate Judge.

[ii] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

[iii] A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

[iv] Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

[v] The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

[vi] The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,		
Plaintiff,	:	ORDER TO CONTINUE FOR TRIAL
vs.	:	
BRIAN KENNETH MILLER	:	Case No. 2:09CR 97 DAK Hon. Dale A. Kimball
Defendant.	:	
	:	
	:	

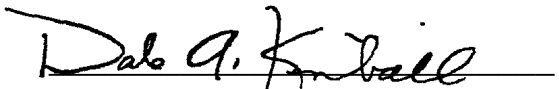
This matter was set for trial on **June 28, 2010.** Mr. Miller is represented by Todd Utzinger and the United States is represented by Karin Fojtik.

IT IS FURTHER ORDERED: based on the motion to continue filed in this matter, the time between **June 28, 2010** and the new trial date of **September 13, 2010 at 8:30,** is excluded from the calculation under the Speedy Trial Act in order to grant defense counsel and the government sufficient time to prepare, and based on the reasons articulated in the motion filed in this matter. The Court finds that such a continuance is required for effective preparation for trial taking into account

the exercise of due diligence and the need for additional time to allow Mr. McMurray to prepare his client to change his plea. The Court further finds that this additional time outweighs the best interest of the public and the defendant in a speedy trial and allows for consideration of the pending change of plea. This order is granted pursuant to 18 U.S.C. § 3161(h)(7)(A) & 18 U.S.C. § 3161(h)(1)(G), and 18 U.S.C. § 3161 (h)(3)(A).

DATED this 24th day of May, 2010.

BY THE COURT:



HON. DALE A. KIMBALL
U.S. DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA
v.
JOSEPH A. SIMONS

ORDER OF PROBATION UNDER 18 U.S.C. § 3607

CASE NUMBER: 2:09-CR-00326-RTB

The defendant having been found guilty of an offense described in 21 U.S.C. 844, by reason of a plea of guilty and it appearing that the defendant (1) has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to controlled substances, and (2) has not previously been the subject of a disposition under this subsection,

IT IS ORDERED that the defendant is placed on probation as provided in 18 U.S.C. § 3607 for a period of twelve (12) months without a judgment of conviction first being entered. The defendant shall comply with the conditions of probation set forth on both pages of this Order, and the following special conditions:

The defendant:

1) **Shall pay a fine in the amount of $1,000 and a $25 special assessment fee;**
2) **Shall submit to drug/alcohol testing, as directed by the probation office, and, if directed by probation, shall pay a one-time $115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation office.**

Date: 5-24-10

Signature of Judicial Officer

Robert T. Braithwaite, U.S. Magistrate
Name and Title of Judicial Officer

CONSENT OF THE DEFENDANT

I have read the proposed Order of Probation Under 18 U.S.C. § 3607 and the Conditions of Probation. I understand that if I violate any conditions of probation, the court may enter a judgment of conviction and proceed as provided by law. I consent to the entry of the Order.

I also understand that, if I have not violated any condition of my probation, the Court, without entering a judgment of conviction, (1) may dismiss the proceedings and discharge me from probation before the expiration of the term of probation, or (2) shall dismiss the proceedings and discharge me from probation at the expiration of the term of probation.

Joseph A. Simons
(Signature of Defendant)

1650 Em Ray Dr.
(Street Address)

Eugene, OR 97405
(City, State, Zip)

503-530-6962
(Telephone Number of Defendant)

L. Crane
(Signature of Defense Counsel)

5-20-10
(Date of Signing)

CONDITIONS OF PROBATION

While the defendant is on probation, the defendant:

1) shall not commit another federal, state, tribal or local crime;

2) shall not leave the judicial district without the permission of the court or probation officer;

3) shall report to the probation officer as directed by the court and shall submit a truthful and complete written report within the first five days of each month;

4) shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

5) shall support his or her dependents and meet other family responsibilities;

6) shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

7) shall notify the probation officer within seventy-two hours of any change in residence or employment;

8) shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

9) shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

10) shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

11) shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

12) shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

13) shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without permission of the court;

14) as directed by the probation officer, shall notify third parties of risks that may be occasioned by defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notification and to confirm the defendant's compliance with such notification requirement;

15) shall not possess a firearm or destructive device.

16) shall submit to a search of his or her person, residence, office or vehicle under his/her control by a U.S. probation officer or any other authorized person under the immediate and personal supervision of the U.S. Probation Officer, without a search warrant, to ensure compliance with all conditions of release, at a reasonable time and manner based on a reasonable suspicion of contraband or evidence of a violation of a condition of probation. Defendant shall warn any other residents that the premise may be searched pursuant to this condition.

DATED: 5/15/2010 by _____
Signature of Defendant

DATED: 5/20/10 by: _____

United States District Court

DISTRICT OF UTAH

UNITED STATES OF AMERICA

V.

ORDER OF DISCHARGE AND DISMISSAL

KEITH ANDREWS

CASE NUMBER: 2:09-CR-00558-001 RTB

WHEREAS, the above-named defendant having previously been placed on probation under 18 U.S.C. § 3607 for a period not exceeding one year, and the Court having determined that said defendant has completed the period of probation without violation,

IT IS ORDERED that pursuant to 18 U.S.C. § 3607(a), the Court, without entry of judgment, hereby discharges the defendant from probation and dismisses those proceedings for which probation had been ordered.

Honorable Robert T. Braithwaite
United States Magistrate Judge

5-24-10
Date

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. WILLIAM STEVEN CHANEY, Defendant.	**ORDER GRANTING MOTION TO CONTINUE SENTENCING HEARING DATE** Case No. 2:09-CR-727 TC

Based upon the stipulation of counsel and good cause appearing:

IT IS HEREBY ORDERED that the Motion to Continue the Sentencing hearing is **GRANTED**. The Sentencing hearing will be continued to August 31, 2010 at 2:30 a.m./p.m.

DATED this 21 day of May, 2010.

BY ORDER OF THE COURT:

Tena Campbell

HONORABLE TENA CAMPBELL
United States District Court Chief Judge

Kimberly J. Trupiano #11238
TRUPIANO LAW, P.C.
5872 South 900 East, Ste. 260
Salt Lake City, UT 84121
Telephone: (801) 266-0166
Facsimile: (801) 266-0169
Email: kim@trupianolaw.com
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. SALVADOR RAMIREZ, Defendant.	**ORDER GRANTING MOTION TO SUBSTITUTE COUNSEL** Case No. 2:09-CR-00784-TS Judge Robert Braithwaite

Based on Defendant's Motion to Substitute Counsel, and for good cause appearing therefore, Defendant's Motion to Substitute Counsel is hereby GRANTED.

WHEREFORE, this Court enters Ms. Kimberly J. Trupiano as counsel of record and this excuses Mr. Keith C. Barnes from his appointment in the above-referenced matter.

Dated this 22 day of May 2010.

Robert Braithwaite
Magistrate Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of May, 2010, I served by the marked method(s) below a true and correct copy of the foregoing to the following person(s):

Keith C. Barnes, Esq. Barnes Law Offices 415 N. Main Street, Ste. 303 Cedar City, UT 84721 *Attorney for Defendant*	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile (x) E-filed
Paul D. Kohler U.S. Attorney's Office (St. George) 20 N. Main, St., Ste. 208 St. George, UT 84770 *Attorney for State*	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile (x) E-filed
Kimberly J. Trupiano Trupiano Law, P.C. 5872 South 900 East, Ste. 260 Salt Lake City, UT 84121 *New Attorney for Defendant*	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile (x) E-filed

_____

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MARIA RUTH RAMIREZ, Defendant.	**ORDER TO CONTINUE SENTENCING** Case No. 2:09 CR 805 DS

Based upon the motion of the Defendant, Maria Ruth Ramirez, through her counsel of record, Natalie A. Benson, and good cause appearing, the Court hereby continues the Sentencing in the above entitled matter currently set for May 27, 2010 at 2:30 p.m. to the 16th day of June_, 2010, at 2:00 p.m.

Dated this 24th day of May, 2010.

BY THE COURT:

David Sam
United States District Court Judge

SHANE D. HILLMAN (8194)
DAMON GEORGELAS (9751)
Parsons Behle & Latimer
One Utah Center
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
Telephone: (801) 532-1234
Facsimile: (801) 536-6111
Attorneys for Robert C. Tripodi Jr.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

ROBERT C. TRIPODI JR., an individual and citizen of California Plaintiff, vs. CAPITAL CONCEPTS, LLC, a Utah limited liability company; BLAIR S. ARNELL, an individual and citizen of Utah; NATHAN ARNELL, an individual and citizen of Utah; PRIME WEST JORDANELLE, LLC, a Utah limited liability company; PWJ HOLDINGS, a Utah limited liability company; NATHAN WELCH, an individual and citizen of Utah; OILWELL PROPERTIES, LC a Utah limited liability company; and JOHN DOES I-X, Defendants.	**SCHEDULING ORDER AND ORDER VACATING HEARING** Case No. 2:09-cv-071-CW Judge: Clark Waddoups

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge[1] received the Attorneys' Planning Report filed by counsel (docket #39). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for May 26, 2010 @ 11:30 a.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1. PRELIMINARY MATTERS **Date**

Nature of claim(s) and any affirmative defenses:
Negligent and Fraudulent misrepresentations; Breach of Promissory Notes; Foreclosure of Real property and Lien Priority Dispute.

a. Was Rule 26(f)(1) Conference held? *Various*

b. Has Attorney Planning Meeting Form been submitted? *04/14/2010*

c. Was 26(a)(1) initial disclosure completed? **04/30/10**

2. DISCOVERY LIMITATIONS

a. Discovery is allowed only on the following subjects:

1. All issues raised in Complaint and Answers.

b. Discovery shall be subject to the following limitations:

1. Maximum Number of Depositions by Plaintiff(s) (in addition to those already taken) 10

2. Maximum Number of Depositions by Defendant(s) (in addition to those already taken) 10

3. Maximum Number of Hours for Each Deposition 7.5

4. Maximum Interrogatories by any Party to any Party (in addition to those already served) 25

5. Maximum requests for admissions by any Party to any Party no limit

6. Maximum requests for production by any Party to any Party no limit

3. AMENDMENT OF PLEADINGS/ADDING PARTIES[2] **Date**

a. Last Day to File Motion to Amend Pleadings 06/30/2010

b. Last Day to File Motion to Add Parties 06/30/2010

4. RULE 26(a)(2) REPORTS FROM EXPERTS[3]

a. Case in Chief *08/31/2010*

b. **Rebuttal/Counter Reports** *09/30/2010*

5. OTHER DEADLINES

a. **Discovery to be completed by:**

Fact Discovery *07/31/2010*

Expert Discovery *10/31/2010*

b. *(optional)* **Final date for supplementation of disclosures and discovery under Rule 26(e)** _____

c. **Deadline for filing dispositive or potentially dispositive motions** *11/30/2010*

6. SETTLEMENT / ALTERNATIVE DISPUTE RESOLUTION

a. **Referral to Court-Annexed Mediation**

b. **Referral to Court-Annexed Arbitration**

c. **Evaluate case for Settlement/ADR on**

d. **Settlement probability:** *fair*

7. TRIAL AND PREPARATION FOR TRIAL

a. **Rule 26(a)(3) Pretrial Disclosures**[4]

Plaintiffs **03/11/11**

Defendants **03/25/11**

b. **Objections to Rule 26(a)(3) Disclosures** _____
(if different than 14 days provided in Rule)

c. **Special Attorney Conference**[5] **on or before** *04/08/11*

d. **Settlement Conference**[6] **on or before** **04/08/11**

e. **Final Pretrial Conference** *2:30 P.M. 04/25/11*

f. Trial	**Length**	**Time**	**Date**
i. Bench Trial	*3 days*	*8:30 a.m.*	*05/09/11*
ii. Jury Trial			

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding *Daubert* and *Markman* motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine, should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under *Daubert* must be raised by written motion before the final pre-trial conference.

Dated this 24th day of May 2010.

BY THE COURT:

David Nuffer
U.S. Magistrate Judge

[1] The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2(b) and 28 U.S.C. 636 (b)(1)(A) or DUCivR 72-2(c) and 28 U.S.C. 636(b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2(b) or (c) should appear on the caption as required under DUCivR 10-1(a).

[2] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

[3] A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

[4] Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

[5] The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

[6] Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

ERIK STRINDBERG (Bar No. 4134)
RACHEL E. OTTO (Bar No. 12191)
STRINDBERG & SCHOLNICK, LLC
785 North 400 West
Salt Lake City, Utah 84103
Telephone: (801) 359-4169
Facsimile: (801) 359-4313
erik@utahjobjustice.com
rachel@utahjobjustice.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

ANDRE BRAZZLE, Plaintiff, vs. **WASHINGTON CITY** Defendant.	**ORDER GRANTING STIPULATED MOTION TO AMEND AND AMENDED SCHEDULING ORDER** Civil No. 2:09-CV-74 Magistrate Judge Brooke Wells

Based on the Stipulated Motion (docket #59) submitted by the Parties, the Court GRANTS the motion. The following matters are set.

Fact Discovery – to be completed by November 30, 2010

Expert and damage discovery – to be complete three months after the court rules on any additional motions for summary judgment.

Deadline for Filing Any Additional Dispositive Motions for Summary Judgment: January 17, 2011.

Evaluate Case for settlement: November 30, 2010.

All other dates and matters set forth in the Initial Scheduling Order shall remain in effect.

The Court also set the following dates:

TRIAL AND PREPARATION FOR TRIAL:

a.	Rule 26(a)(3) Pretrial Disclosures			
	Plaintiff			04/22/11
	Defendant			05/06/11
b.	Special Attorney Conference on or before			05/20/11
c.	Settlement Conference on or before			05/20/11
d.	Final Pretrial Conference		2:30 p.m.	06/06/11
e.	Jury Trial	Five days	8:30 a.m.	06/20/11

Dated this 22nd day of May 2010.

BY THE COURT:

David Nuffer
U.S. Magistrate Judge

Approved as to Form:

DURHAM JONES & PINEGAR, P.C.

/s/ Bryan Pattison (signed with permission)
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

INTERNATIONAL COAL GROUP, INC., a Delaware corporation; and IGC HAZARD, LLC, a Delaware limited liability company, **Plaintiffs and Counterclaim Defendants,** **v.** **TETRA FINANCIAL GROUP, LLC, a Utah limited liability company,** **Defendant and Counterclaim Plaintiff.**	**MEMORANDUM DECISION AND ORDER** **Case No. 2:09-cv-115-CW-PMW** **District Judge Clark Waddoups** **Magistrate Judge Paul M. Warner**

District Judge Clark Waddoups referred this case to Magistrate Judge Paul M. Warner pursuant to 28 U.S.C. § 636(b)(1)(A).[1] Before the court is Marquette Equipment Finance, LLC's ("Marquette") motion to quash a subpoena ("Subpoena") issued by Tetra Financial Group, LLC ("Tetra").[2] The court has carefully reviewed the written memoranda submitted by the parties. Pursuant to civil rule 7-1(f) of the Rules of Practice for the United States District Court for the District of Utah, the court has concluded that oral argument is not necessary and will determine the motion on the basis of the written memoranda. *See* DUCivR 7-1(f).

[1] *See* docket no. 19.

[2] *See* docket no. 50.

In its motion, Marquette argues that the Subpoena should be quashed because it requires disclosure of confidential commercial information, *see* Fed. R. Civ. P. 45(c)(3)(B)(i), and imposes an undue burden, *see* Fed. R. Civ. P. 45(c)(3)(A)(iv).

Rule 45(c)(3)(B)(i) of the Federal Rules of Civil Procedure provides that "the issuing court may, on motion, quash or modify [a] subpoena if it requires . . . disclosing a trade secret or other confidential research, development, or commercial information." Fed. R. Civ. P. 45(c)(3)(B)(i). If the person or entity subject to the subpoena

> shows that the information sought is a trade secret or confidential research, development[,] or commercial information that might be harmful if disclosed, the burden shifts to the party seeking discovery to establish that disclosure is both relevant and necessary. Then the court must balance the need for confidential information against the possible injury resulting from disclosure.

Fanjoy v. Calico Brands, Inc., No. 2:06-mc-469-DB, 2006 U.S. Dist. LEXIS 55158, at *6-7 (D. Utah August 7, 2006) (unpublished) (footnotes omitted); *see also, e.g.*, *Centurion Indus., Inc. v. Warren Steurer & Assocs.*, 665 F.2d 323, 325 (10th Cir. 1981); *Echostar Commc'ns. Corp. v. News Corp. Ltd.*, 180 F.R.D. 391, 394 (D. Colo. 1998). If a subpoena seeks discovery from a non-party, that is a factor that courts consider, but non-party status weighs against requiring disclosure. *See Fanjoy*, 2006 U.S. Dist. LEXIS 55158, at *7; *see also Goodyear Tire & Rubber Co. v. Kirk's Tire & Auto Servicenter of Haverstraw, Inc.*, 211 F.R.D. 658, 662-63 (D. Kan. 2003).

Marquette asserts that the Subpoena requires it to produce documents that contain sensitive and confidential commercial information about Marquette's business methods.

Marquette supports that assertion with an affidavit from its counsel.[3] Marquette further asserts that production of those documents will be harmful because Marquette and Tetra are direct competitors in the business of financing transactions to purchase and lease commercial equipment. Marquette also asserts that its non-party status weighs in favor of quashing the Subpoena.

In response, Tetra argues that compliance with the Subpoena will not require Marquette to disclose any confidential commercial information to the parties in this case. Tetra asserts that its offer to allow Marquette to produce documents with an "Attorneys' Eyes Only" designation under the stipulated protective order entered in this case should satisfy any concerns that Marquette has about disclosing confidential commercial information.

Tetra also argues that the documents sought by the Subpoena are relevant and necessary to their case. In support of that argument, Tetra relies almost exclusively upon a memorandum decision and order issued by this court on February 2, 2010.[4] In that order, this court ruled that International Coal Group, Inc. and IGC Hazard, LLC (collectively, "Plaintiffs") were required to produce documents responsive to two of Tetra's discovery requests because those documents were relevant for purposes of rule 26(b)(1) of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 26(b)(1). In general terms, those discovery requests sought documents from Plaintiffs related to their efforts to obtain financing for certain commercial equipment from financiers other

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[3] *See* docket no. 51, Exhibit A.

[4] *See* docket no. 42.

than Tetra. The Subpoena seeks essentially the same documents from Marquette, which is one of those other financiers.

The court has determined that Marquette has carried its burden of demonstrating that the Subpoena seeks confidential commercial information and that the disclosure of that information would be harmful. Marquette's counsel's affidavit is sufficient to satisfy the court that the Subpoena requires Marquette to produce documents that contain sensitive and confidential commercial information. In addition, the undisputed fact that Marquette and Tetra are direct competitors in the same industry provides a presumption that requiring Marquette to disclose that information to Tetra would be harmful. *See, e.g.*, *Echostar Commc'ns. Corp.*, 180 F.R.D. at 395.

The court has also determined that Tetra has failed to carry its burden of demonstrating that the documents sought by the Subpoena are both relevant and necessary. While the court acknowledges that those documents are likely relevant, Tetra has failed to demonstrate that they are necessary in this case. As Tetra has correctly noted, this court previously ruled that Plaintiffs were required to produce documents responsive to two of Tetra's discovery requests because those documents were relevant for purposes of rule 26(b)(1). Because those discovery requests and the Subpoena seek essentially the same type of documents, it follows that the documents sought by the Subpoena are likely relevant.

By relying on this court's previous ruling to demonstrate relevance, however, Tetra has undermined any argument it had concerning necessity. The court agrees with Marquette's assertion that any relevant documents concerning Plaintiffs' efforts to obtain financing from Marquette likely have already been produced by Plaintiffs as a result of the ruling. Notably,

Tetra did not address that assertion in its response to Marquette's motion. Because it is likely that Tetra has already obtained the documents sought by the Subpoena as part of Plaintiffs' document production during discovery, the Subpoena appears to be duplicative. *See* Fed. R. Civ. P. 26(b)(2)(C)(i)-(ii) ("On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; [or] (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action . . . ."). Accordingly, the court concludes that Tetra has failed to demonstrate that the documents sought by the Subpoena are necessary in this case.

In addition to Tetra's failure to establish that the documents sought by the Subpoena are necessary, the court has also considered Marquette's status as a non-party as a factor weighing in favor of quashing the Subpoena. *See, e.g.*, *Fanjoy*, 2006 U.S. Dist. LEXIS 55158, at *7.

For all these reasons, the court concludes that the Subpoena should be quashed pursuant to rule 45(c)(3)(B)(i). *See* Fed. R. Civ. P. 45(c)(3)(B)(i). Accordingly, Marquette's motion to quash the Subpoena[5] is **GRANTED**.

Because the court has concluded that the Subpoena should be quashed, the court has determined that it is unnecessary to address Tetra's argument concerning its offer to allow Marquette to produce documents with an "Attorneys' Eyes Only" designation under the

[5] *See* docket no. 50.

stipulated protective order in this case. In addition, because the court has based its ruling on rule 45(c)(3)(B)(i), the court has determined that it is unnecessary to address Marquette's arguments concerning undue burden under rule 45(c)(3)(A)(iv). *See* Fed. R. Civ. P. 45(c)(3)(A)(iv).

IT IS SO ORDERED.

DATED this 24th day of May, 2010.

BY THE COURT:

PAUL M. WARNER
United States Magistrate Judge

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

AARON L. SAMPSON, Plaintiff, v. INTEGRA TELECOM HOLDINGS, INC., d/b/a INTEGRA TELECOM, and INTEGRA TELECOM OF UTAH, INC., Defendants.	Court File No. 2:09-cv-120 Judge Clark Waddoups **ORDER GRANTING STIPULATED MOTION TO AMEND SCHEDULING ORDER AND AMENDED SCHEDULING ORDER**

BASED UPON THE STIPULATION by and between Plaintiff Aaron L. Sampson ("Plaintiff") and Defendants Integra Telecom Holdings, Inc., d/b/a Integra Telecom and Integra Telecom of Utah, Inc., ("Defendants") (docket #38) the Court hereby finds there is good cause to amend the Scheduling Order [Doc. No. 11] in the above-captioned matter and hereby GRANTS the motion to amend and the following matters are set:

7. TRIAL AND PREPARATION FOR TRIAL TIME DATE

a. Rule 26(a)(3) Pretrial Disclosures

Plaintiff	*08/27/10*
Defendants	*09/10/10*

b. Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)

c. Special Attorney Conference on or before *09/20/10*

d. Settlement Conference on or before *09/20/10*

e. Final Pretrial Conference 2:30 p.m. *09/28/10*

f. Trial Length

i. Bench Trial

ii. Jury Trial *Four days* 8:30 a.m. *10/12/10*

Dated:May 22, 2010

David Nuffer
United States Magistrate Judge

Mark F. James (5295)
Mitchell A. Stephens (11775)
Hatch, James & Dodge, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666
Email: mjames@hjdlaw.com
stephens@hjdlaw.com

Attorneys for Defendant Lawrence Bank

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

GREG ARNSON, *et al.*, Plaintiffs, v. MY INVESTING PLACE L.L.C., *et al.*, Defendants.	**ORDER FOR PRO HAC VICE ADMISSION OF ROBERT M. PITKIN** Case No. 2:09-cv-00254-DB Judge Dee Benson

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Robert M. Pitkin in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 21st day of May, 2010.

Dee Benson
U.S. District Judge

Mark F. James (5295)
Mitchell A. Stephens (11775)
Hatch, James & Dodge, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666
Email: mjames@hjdlaw.com
stephens@hjdlaw.com

Attorneys for Defendant Lawrence Bank

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

GREG ARNSON, *et al.*, Plaintiffs, v. MY INVESTING PLACE L.L.C., *et al.*, Defendants.	**ORDER FOR PRO HAC VICE ADMISSION OF SHANE C. MECHAM** Case No. 2:09-cv-00254-DB Judge Dee Benson

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Shane C. Mecham in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 21st day of May, 2010.

Dee Benson

U.S. District Judge

Brian C Johnson, USB No. 3936
Jacob C. Briem, USB No. 10463
STRONG & HANNI
3 Triad Center, Suite 500
Salt Lake City, Utah 84180
Telephone: (801) 532-7080
Facsimile: (801) 596-1508
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT,

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

BRIAR PATCH EDUCATION LLC, Plaintiff, v. FASI FILIAGA, PRECISE BUSINESS SOLUTIONS, INC., and CHRISTOPHER LEE HANKS, Defendants.	**~~[PROPOSED]~~ ORDER RE: MOTION TO VACATE TEMPORARY RESTRAINING ORDER** Case No.: 2:09-cv-00301 Judge Dee Benson

NOW before the Court is Plaintiff Briar Patch Education, LLC's Motion to Vacate Temporary Restraining Order (Dkt. No. 20) (N.D.Ill. Case No. 1:08-cv-4969) entered on September 23, 2009.

Upon premises considered and for good cause shown, the Court hereby finds the Motion to Vacate Temporary Order should be GRANTED.

IT IS HEREBY ORDERED that the Temporary Restraining Order entered September 23, 2009 (Dkt. No. 20) (N.D.Ill. Case No. 1:08-cv-4969) is hereby VACATED.

IT IS SO ORDERED this 21st day of May, 2010.

Dee Benson

HONORABLE DEE BENSON
U.S. DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CENTER CAPITAL CORP., Plaintiff, v. BUSINESSJET LEASING, INC., et. al., Defendant.	**SCHEDULING ORDER** Case No. 2:09-cv-00406-TS District Judge Ted Stewart Magistrate Judge Brooke C. Wells

Pursuant to Fed.R. Civ P. 16(b), counsel filed a Stipulated Scheduling Order as directed by the Hon. Ted Stewart (docket #58) The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

1.	**PRELIMINARY MATTERS**	**DATE**
	Nature of claims and any affirmative defenses: Plaintiff claims Defendants breached a contract for the financing of an aircraft. Plaintiff has sold the aircraft in mitigation of its damages. The Defendants allege that the sale of the aircraft was not commercially reasonable.	
a.	Was Rule 26(f)(1) Conference held?	*01/22/10*
b.	Has Attorney Planning Meeting Form been submitted?	*No*
c.	Was 26(a)(1) initial disclosure completed?	*No*

2.	**DISCOVERY LIMITATIONS**	**NUMBER**
a.	Maximum Number of Depositions by Plaintiff(s)	*10*
b.	Maximum Number of Depositions by Defendant(s)	*10*
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	*7*
d.	Maximum Interrogatories by any Party to any Party	*25*

e.	Maximum requests for admissions by any Party to any Party	*30*
f.	Maximum requests for production by any Party to any Party	*50*

g. Discovery of electronically stored information should be handled as follows: The parties do not anticipate significant ESI and agree to produce same in print form.

h. Claim of privilege or protection as trial preparation material asserted after production shall be handled as follows: The parties agree that any privilege or protection is not waived by disclosure connected with this litigation.

3.	**AMENDMENT OF PLEADINGS/ADDING PARTIES[1]**	**DATE**
a.	Last Day to File Motion to Amend Pleadings	*05/15/10*
b.	Last Day to File Motion to Add Parties	*05/15/10*

4.	**RULE 26(a)(2) REPORTS FROM EXPERTS[2]**	**DATE**
a.	Plaintiff	*09/10/10*
b.	Defendant	*10/1/10*
c.	Counter reports	*10/18/10*

5.	**OTHER DEADLINES**	**DATE**
a.	Discovery to be completed by:	
	Fact discovery	*07/30/10*
	Expert discovery	*11/05/10*
b.	*(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)	*00/00/00*
c.	Deadline for filing dispositive or potentially dispositive motions.	*11/02/10*

6.	SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION		DATE
a.	Referral to Court-Annexed Mediation:	*No*	
b.	Referral to Court-Annexed Arbitration	*No*	
c.	Evaluate case for Settlement/ADR on		*01/29/2010*
d.	Settlement probability: This matter did not settle at court ordered settlement conference. Likelihood of settlement is probable, however. No jury demand. A bench trial will likely take three days.		

7.	TRIAL AND PREPARATION FOR TRIAL		TIME	DATE
a.	Rule 26(a)(3) Pretrial Disclosures[3]			
	Plaintiff			*10/08/10*
	Defendant			*10/22/10*
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)			*00/00/00*
c.	Special Attorney Conference[4] on or before			*11/05/10*
d.	Settlement Conference[5] on or before			*11/05/10*
e.	Final Pretrial Conference		2:30 p.m.	*11/23/10*
f.	Trial	Length		
	i. Bench Trial	*3*	8:30 a.m.	*12/08/10*
	ii. Jury Trial	*N/A*	___:__ _.m.	*00/00/00*

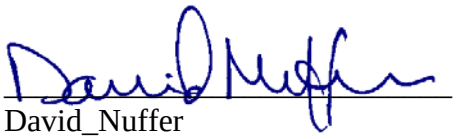
*Pursuant to Judge Stewart's Memorandum Decision of May 6, 2010, counsel for Center Capital Corp., D & D Aviation, Richard Hopkins, and Lynda Hopkins jointly contacted Judge Stewart's chambers and obtained the trial date of December 8 through December 10, 2010.

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

May 22, 2010.

BY THE COURT:



David_Nuffer
U.S. Magistrate Judge

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[1] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

[2] A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

[3] Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

[4] The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

[5] The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

LISA MITCHELL, an individual, Plaintiff, v. LIGHT TOUCH LASER SKIN CARE CENTER, a Utah dba, INNOVATIVE AESTHETICS, INC., a Utah corporation, and JACKSON RHUDY, an individual, Defendants.	**SCHEDULING ORDER AND ORDER VACATING PRETRIAL HEARING** Case No. 2:09cv00699 The Honorable Clark Waddoups Magistrate Judge Samuel Alba

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge[1] received the Attorneys' Planning Report filed by counsel (docket #29). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for June16, 2010, at 11:30 a.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1.	**PRELIMINARY MATTERS**	**DATE**
	Nature of claims and any affirmative defenses:	
a.	Was Rule 26(f)(1) Conference held?	04/*20/10*
b.	Has Attorney Planning Meeting Form been submitted?	05/13/10
c.	Was 26(a)(1) initial disclosure completed?	06/*04/10*

2.	DISCOVERY LIMITATIONS	NUMBER
a.	Maximum Number of Depositions by Plaintiff(s)	*7*
b.	Maximum Number of Depositions by Defendant(s)	*7*
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	*7*
d.	Maximum Interrogatories by any Party to any Party	*25*
e.	Maximum requests for admissions by any Party to any Party	*35*
f.	Maximum requests for production by any Party to any Party	*50*

3.	AMENDMENT OF PLEADINGS/ADDING PARTIES[2]	DATE
a.	Last Day to File Motion to Amend Pleadings	*9/3/10*
b.	Last Day to File Motion to Add Parties	*9/3/10*

4.	RULE 26(a)(2) REPORTS FROM EXPERTS[3]	DATE
a.	Plaintiff	*12/17/10*
b.	Defendant	*1/14/11*
c.	Counter reports	*2/4/11*

5.	OTHER DEADLINES	DATE
a.	Discovery to be completed by:	
	Fact discovery	*11/15/10*
	Expert discovery	*3/4/11*
b.	*(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)	*00/00/00*

c.	Deadline for filing dispositive or potentially dispositive motions			*4/8/11*

6.	**SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION**	**DATE**
a.	Referral to Court-Annexed Mediation:	No
b.	Referral to Court-Annexed Arbitration	No
c.	Evaluate case for Settlement/ADR on	*4/15/11*
d.	Settlement probability:	*Fair*

7.	**TRIAL AND PREPARATION FOR TRIAL**		**TIME**	**DATE**
a.	Rule 26(a)(3) Pretrial Disclosures[4]			
	Plaintiff			*07/15/11*
	Defendant			*07/29/11*
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)			*00/00/00*
c.	Special Attorney Conference[5] on or before			*08/12/11*
d.	Settlement Conference[6] on or before			*08/12/11*
e.	Final Pretrial Conference		2:30 p.m.	*08/29/11*
f.	Trial	Length		
	i. Bench Trial	*# days*	___:__ _.m.	*00/00/00*
	ii. Jury Trial	*7 days*	8:30 a.m.	*09/12/11*

8. OTHER MATTERS

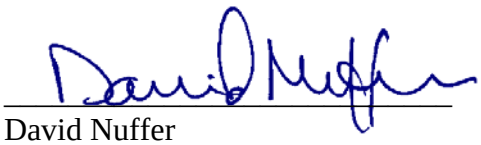
Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

A party will have an obligation to produce all electronically stored information that can be located through a reasonably diligent search. Should a party request electronic documents or information requiring extraordinary steps for search, retrieval or production, such as documents created or used by electronic media no longer in use, maintained in redundant electronic storage media, or for which retrieval involves substantial cost, the party to whom the request is directed shall object to such a request and state the basis of its objections. If, after meeting and conferring, the requesting party still desires production of such documents or information, the requesting party will be responsible for all costs and expenses incurred in the search, retrieval, and production of such documents or information, to the extent the Court determines the objection to be reasonable and such information to be discoverable.

Should a party inadvertently disclose information or documents that are protected from disclosure as privileged or work product, such inadvertent disclosure will not act as a waiver of the inadvertently disclosing party's rights. The disclosing party will have a reasonable amount of time, after learning of the inadvertent disclosure, to request return of the inadvertently disclosed information or documents. Moreover, the inadvertently disclosed documents or information will not be considered admissible as evidence and cannot be used in any manner by opposing counsel. Should opposing counsel have reason to believe that documents or information has been inadvertently disclosed, counsel will notify the disclosing party of the inadvertent disclosure and return the inadvertently disclosed documents immediately.

May 22, 2010.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

[1] The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

[2] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

[3] A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

[4] Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

[5] The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

[6] The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

Brent O. Hatch (5715)
bhatch@hjdlaw.com
HATCH, JAMES, & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666

James D. Herschlein (pro hac vice pending)
jherschlein@kayescholer.com
KAYE SCHOLER LLP
425 Park Avenue
New York, New York 10022
Telephone: (212) 836-8000
Facsimile: (212) 836-8689
Attorneys for Lutron Electronics Co., Inc.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

LUTRON ELECTRONICS CO., INC., Plaintiff, v. CRESTRON ELECTRONICS, INC., a New Jersey corporation, FACE GROUP, INC. D/B/A LIFESTYLE ELECTRONICS, a Utah corporation, LAVA CORP., a Utah corporation, AUDIO VISION SYSTEMS, LLC, a Utah limited liability company, Defendants.	**ORDER OVERRUILING AND DENYING DEFENDANTS' OBJECTIONS TO MAGISTRATE'S DECISION ON DEFENDANT'S MOTION TO TRANSFER AND SEVER** Case: 2:09-cv-707 Judge: Dee Benson

On January 16, 2010, Defendants filed a Motion to Change Venue, Sever Lutron's Action Against Crestron, and Stay Action as to Remaining Defendants. [Dkt. 21]. That motion was fully briefed by the parties; a total of 186 pages of briefing and exhibits were filed with the Court on this issue. [*See* Dkt. 22, 26, & 30]. On April 14, 2010, Magistrate Judge Brook Wells issued

a well reasoned and detailed Order and Memorandum Decision Denying Defendants' Motion to Sever and Transfer. [Dkt. 40]. Judge Wells' ultimate conclusion was that "Defendants have failed to meet their burden to show that it is for the convenience of the parties and witnesses, and in the interest of justice to transfer this matter." [*Id.* at p. 7].

On April 27, 2010, Defendants filed their Objections to Magistrate's Decision on Defendant's Motion to Transfer and Sever. Pursuant to DUCiv. R. 72-3(b), Lutron submitted a proposed order denying the motion on May 12, 2010. *See* DUCiv. R. 72-3(b) ("If no order denying the motion or setting a briefing schedule is filed within 14 days after the objection is filed, the non-moving party shall submit to the judge a proposed order denying the motion.").

Having considered all matters of record on this issue, and in particular Judge Wells' Order denying the same, and in light of the deferential standard of review applicable to objections from a magistrate judge's non-dispositive rulings, the Court hereby:

DENIES Defendants' objections and AFFIRMS the Magistrate's Order (Dkt. 40).

DATED this 24th day of May, 2010

Dee Benson

Judge Dee Benson
United States District Court

Robert L. Janicki, #5493
Andrew D. Wright, #8857
James C. Thompson, #9888
STRONG & HANNI
3 Triad Center, Suite 500
Salt Lake City, Utah 84180
Telephone: (801) 532-7080
Facsimile: (801) 323-2037
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

JOE GIBBONS, Plaintiff, v. GARFF-WARNER NISSAN OF OREM, LLC dba KEN GARFF NISSAN OF OREM and KEN GARFF AUTOMOTIVE GROUP; JOHN GARFF, Defendant.	)	**SCHEDULING ORDER AND ORDER VACATING HEARING** Civil No. 2:09-cv-00718-DN District Judge Ted Stewart Magistrate Judge David Nuffer

Pursuant to Fed. R. Civ P. 16(b), the Magistrate Judge[i] received the Attorneys' Planning Report filed by counsel (docket #14). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Conference set for June 16, 2010 @ 10:30 a.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1.		**PRELIMINARY MATTERS**	**DATE**
		Nature of claims and any affirmative defenses:	
	a.	Was Rule 26(f)(1) Conference held?	05/10/10
	b.	Has Attorney Planning Meeting Form been submitted?	05/12/10
	c.	Was 26(a)(1) initial disclosure completed?	06/01/10
2.		**DISCOVERY LIMITATIONS**	**NUMBER**
	a.	Maximum Number of Depositions by Plaintiff(s)	10
	b.	Maximum Number of Depositions by Defendant(s)	10
	c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	7
	d.	Maximum Interrogatories by any Party to any Party	25
	e.	Maximum requests for admissions by any Party to any Party	25
	f.	Maximum requests for production by any Party to any Party	25
3.		**AMENDMENT OF PLEADINGS/ADDING PARTIES**[ii]	**DATE**
	a.	Last Day to File Motion to Amend Pleadings	07/01/10
	b.	Last Day to File Motion to Add Parties	07/01/10
4.		**RULE 26(a)(2) REPORTS FROM EXPERTS**[iii]	**DATE**
	a.	Plaintiff	12/31/10
	b.	Defendant	02/28/11
	c.	Counter reports	03/31/11
5.		**OTHER DEADLINES**	**DATE**
	a.	Discovery to be completed by:	
		Fact discovery	11/30/10
		Expert discovery	04/30/11
	b.	*(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)	*00/00/00*
	c.	Deadline for filing dispositive or potentially dispositive motions	05/31/11
6.		**SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION**	**DATE**
	a.	Referral to Court-Annexed Mediation: No	
	b.	Referral to Court-Annexed Arbitration No	
	c.	Evaluate case for Settlement/ADR on	04/30/11
	d.	Settlement probability:	Unknown

7.	TRIAL AND PREPARATION FOR TRIAL		TIME	DATE
a.	Rule 26(a)(3) Pretrial Disclosures[iv]			
	Plaintiff			*09/16/11*
	Defendant			*09/30/11*
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)			*00/00/00*
c.	Special Attorney Conference[v] on or before			*10/14/11*
d.	Settlement Conference[vi] on or before			*10/14/11*
e.	Final Pretrial Conference		2:30 p.m.	*10/31/11*
f.	Trial	Length		
			___:__ _.m.	*00/00/00*
	i. Bench Trial	*# days*		
			8:30 a.m.	*11/14/11*
	ii. Jury Trial	4 days		

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

May 22, 2010.

BY THE COURT:

David Nuffer
U.S. Magistrate Judge

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[i] The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

[ii] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

[iii] A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

[iv] Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

[v] The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

[vi] The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH CENTRAL DIVISION

CARLOS ONATE, AND KAP, LLC AS TRUSTEE, Plaintiff, v. **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., WELLS FARGO BANK, N.A., DEUTSCHE BANK NATIONAL TRUST COMPANY, ETITLE INSURANCE AGENCY, LLC, AND DOE'S 1-5**, Defendants.	**SCHEDULING ORDER AND ORDER VACATING HEARING** Case No. 09-cv-00854 District Judge: Dee Benson Magistrate Judge: Paul M. Warner

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge[1] received the Attorneys' Planning Report filed by counsel (docket #49). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for May, 26, 2010, at 10:30 a.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1.	**PRELIMINARY MATTERS**		**DATE**
	Nature of claims and any affirmative defenses:		
a.	Was Rule 26(f)(1) Conference held?	yes	
b.	Has Attorney Planning Meeting Form been submitted?		5/19/2010
c.	Was 26(a)(1) initial disclosure completed?		7/1/2010
2.	**DISCOVERY LIMITATIONS**		**NUMBER**
a.	Maximum Number of Depositions by Plaintiff(s)		*10*
b.	Maximum Number of Depositions by Defendant(s)		*10*
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)		*8*

d.	Maximum Interrogatories by any Party to any Party	*30*
e.	Maximum requests for admissions by any Party to any Party	*30*
f.	Maximum requests for production by any Party to any Party	*30*

g. Discovery of electronically stored information should be handled as follows:

h. Claim of privilege or protection as trial preparation material asserted after production shall be handled as follows: *Include provisions of agreement to obtain the benefit of Fed. R. Evid. 502(d).*

3.	**AMENDMENT OF PLEADINGS/ADDING PARTIES**[2]	**DATE**
a.	Last Day to File Motion to Amend Pleadings	*P 10/1/2010*
		D 11/01/10
b.	Last Day to File Motion to Add Parties	P 10/1/2010
		D 11/01/10

4.	**RULE 26(a)(2) REPORTS FROM EXPERTS**[3]	**DATE**
a.	Plaintiff	*1/1/2011*
b.	Defendant	1/31/2011
c.	Counter reports	*3/1/2011*

5.	**OTHER DEADLINES**	**DATE**
a.	Discovery to be completed by:	
	Fact discovery	*12/15/2010*
	Expert discovery	*2/28/2011*
b.	*(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)	*00/00/00*
c.	Deadline for filing dispositive or potentially dispositive motions	*3/31/2011*

6.	**SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION**	**DATE**
a.	Referral to Court-Annexed Mediation:	*Yes*
b.	Referral to Court-Annexed Arbitration	*/No*

c. Evaluate case for Settlement/ADR on *00/00/00*

d. Settlement probability:

7.	TRIAL AND PREPARATION FOR TRIAL		TIME	DATE
a.	Rule 26(a)(3) Pretrial Disclosures[4]			
	Plaintiff			*07/08/11*
	Defendant			*07/22/11*
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)			*00/00/00*
c.	Special Attorney Conference[5] on or before			*08/05/11*
d.	Settlement Conference[6] on or before			*08/05/11*
e.	Final Pretrial Conference		2:30 p.m.	*08/23/11*
f.	Trial	Length		
	i. Bench Trial	*3 days*	8:30 a.m.	*09/06/11*
	ii. Jury Trial		___:__ _.m.	*00/00/00*

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this _____ day of _____, 20__.

BY THE COURT:

_____

David Nuffer
U.S. Magistrate Judge

[1] The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately assigned or referred to that Magistrate Judge.

[2] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

[3] A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

[4] Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

[5] The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

[6] The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

IMPERIAL PREMIUM FINANCE, LLC, Plaintiff, v. SYLVIA HERSKOWITZ, Defendant.	**SCHEDULING ORDER AND ORDER VACATING HEARING** Case No. 2:09cv00861-CW District Judge Clark Waddoups Magistrate Judge Samuel Alba

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge[1] received the Attorneys' Planning Report filed by counsel (docket #24). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for June 16, 2010 at 11:00 a.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1.	**PRELIMINARY MATTERS**		**DATE**
	Nature of claims and any affirmative defenses:		
a.	Was Rule 26(f)(1) Conference held?		05/19/10
b.	Has Attorney Planning Meeting Form been submitted?		05/19/10
c.	Was 26(a)(1) initial disclosure completed?	No	06/02/10
2.	**DISCOVERY LIMITATIONS**		**NUMBER**
a.	Maximum Number of Depositions by Plaintiff(s)		10
b.	Maximum Number of Depositions by Defendant(s)		10
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)		7
d.	Maximum Interrogatories by any Party to any Party		25
e.	Maximum requests for admissions by any Party to any Party		No limit
f.	Maximum requests for production by any Party to any		No limit

Party

g. Discovery of electronically stored information should be handled as follows:

h. Claim of privilege or protection as trial preparation material asserted after production shall be handled as follows: *Include provisions of agreement to obtain the benefit of Fed. R. Evid. 502(d).*

3.	**AMENDMENT OF PLEADINGS/ADDING PARTIES[2]**		**DATE**
a.	Last Day to File Motion to Amend Pleadings		12/01/10
b.	Last Day to File Motion to Add Parties		12/01/10
4.	**RULE 26(a)(2) REPORTS FROM EXPERTS[3]**		**DATE**
a.	Plaintiff		12/29/10
b.	Defendant		01/31/11
c.	Counter reports		02/28/11
5.	**OTHER DEADLINES**		**DATE**
a.	Discovery to be completed by:		
	Fact discovery		11/29/10
	Expert discovery		02/28/11
b.	*(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)		
c.	Deadline for filing dispositive or potentially dispositive motions		01/31/11
6.	**SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION**		**DATE**
a.	Referral to Court-Annexed Mediation:	No	
b.	Referral to Court-Annexed Arbitration	No	
c.	Evaluate case for Settlement/ADR on		11/01/10
d.	Settlement probability:	Fair	
7.	**TRIAL AND PREPARATION FOR TRIAL**	**TIME**	**DATE**
a.	Rule 26(a)(3) Pretrial Disclosures[4]		
	Plaintiff		*05/13/11*

	Defendant			*05/27/11*
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)			*00/00/00*
c.	Special Attorney Conference[5] on or before			*06/10/11*
d.	Settlement Conference[6] on or before			*06/10/11*
e.	Final Pretrial Conference		2:30 P.M.	*06/27/11*
f.	Trial	Length		
	i. Bench Trial	2 days	8:30 A.M.	*07/11/11*
	ii. Jury Trial		___:__ _.m.	*00/00/00*

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

May 22, 2010.

BY THE COURT:

David Nuffer
U.S. Magistrate Judge

[1] The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately assigned or referred to that Magistrate Judge.

[2] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

[3] A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

[4] Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

[5] The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

[6] The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

BASIC RESEARCH, LLC, a Utah limited liability company; DYNAKOR PHARMACAL, LLC, a Utah limited liability company; THE CARTER-REED COMPANY, LLC, a Utah limited liability company; ZOLLER LABORATORIES, LLC, a Utah limited liability company; DENNIS GAY, an individual; and DANIEL B. MOWREY, an individual, Plaintiffs, vs. ADMIRAL INSURANCE COMPANY, a Delaware corporation, Defendant.	Civ. No. 09-cv-00878 District Judge: Waddoups **SCHEDULING ORDER AND ORDER VACATING HEARING**

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge[1] received the Attorneys' Planning Report filed by counsel (docket #32). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for June 16, 2010, at 11:30 a.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1. PRELIMINARY MATTERS **DATE**

Nature of claims and any affirmative defenses:

This is an action brought by Plaintiffs for declaratory relief. Specifically, Plaintiffs seek a declaratory judgment that Defendant has a duty to defend them in underlying suits brought against them in United States District Court, District of Utah and United States District Court, Central District of California under general liability insurance policies issued to Plaintiffs by Defendant. Additionally, Plaintiffs seek a declaratory

judgment that Defendant has no reimbursement rights in connection with any payments Defendant makes on Plaintiffs' behalf in connection with the underlying suits. Defendant has counterclaimed seeking a declaratory judgment that it has no duty to defend or indemnify Plaintiffs with respect to the underlying actions and it is entitled to reimbursement to the extent that Defendant has paid for defense of any of the underlying actions. Plaintiffs recently filed a motion for leave to file a Second Amended Complaint that also alleges breach of contract and seeks damages.

a.	Was Rule 26(f)(1) Conference held?	Yes	05/13/10
b.	Has Attorney Planning Meeting Form been submitted?	Yes	05/14/10
c.	Was 26(a)(1) initial disclosure completed?	No	05/27/10

2. DISCOVERY LIMITATIONS **NUMBER**

The parties agree that no discovery is necessary at this point in the case because the issues in dispute are purely legal. The parties anticipate filing summary judgment motions. After the Court's ruling on the summary judgment motions, the parties and Court can re-evaluate whether any discovery is necessary.

a.	Maximum Number of Depositions by Plaintiff(s)	10
b.	Maximum Number of Depositions by Defendant(s)	10
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	7
d.	Maximum Interrogatories by any Party to any Party	25
e.	Maximum requests for admissions by any Party to any Party	
f.	Maximum requests for production by any Party to any Party	

3. AMENDMENT OF PLEADINGS/ADDING PARTIES[2] **DATE**

a.	Last Day to File Motion to Amend Pleadings	08/31/10
b.	Last Day to File Motion to Add Parties	08/31/10

4.	**RULE 26(a)(2) REPORTS FROM EXPERTS[3]**		**DATE**
a.	Plaintiff		*n/a*
b.	Defendant		*n/a*
c.	Counter reports		*n/a*
5.	**OTHER DEADLINES**		**DATE**
a.	Discovery to be completed by:		
	Fact discovery	If applicable, 90 days after judge issues order on parties' motions for summary judgment	
	Expert discovery		*n/a*
b.	*(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)		*n/a*
c.	Deadline for filing dispositive or potentially dispositive motions		*12/31/10*
6.	**SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION**		**DATE**
a.	Referral to Court-Annexed Mediation:	*No*	
b.	Referral to Court-Annexed Arbitration	*No*	
c.	Evaluate case for Settlement/ADR on	After judge issues order on parties' motions for summary judgment	
d.	Settlement probability:	The parties do not believe settlement discussions would be productive until after the Court rules on the parties' motions for summary judgment.	

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7.	**TRIAL AND PREPARATION FOR TRIAL**	**TIME**	**DATE**
a.	Rule 26(a)(3) Pretrial Disclosures[4]		
	Plaintiff		*04/08/11*
	Defendant		*04/22/11*

b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)			
c.	Special Attorney Conference[5] on or before			*05/06/11*
d.	Settlement Conference[6] on or before			*05/06/11*
e.	Final Pretrial Conference		2:30 p.m.	*05/24/11*
f.	Trial	Length		
	i. Bench Trial	5 *days*	8:30 a.m.	*06/06/11*

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

May 22, 2010.

BY THE COURT:

David Nuffer
U.S. Magistrate Judge

[1] The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately assigned or referred to that Magistrate Judge.

[2] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

[3] A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

[4] Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

[5] The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

[6] The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

Patrick J. Ascione (USB #6469)
ASCIONE & ASSOCIATES, LLC
4692 North 300 West Ste 220
Provo, Utah 84604
(801) 854-1200 / telephone
(801) 854-1201 / fax
pascione@ana-law.com
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

MICHAEL KELLER, MATTHEW BARBER, GABRIEL ADAMS, STEVE MCEWAN, JT REAL ESTATE INVESTMENTS, LLC and JOEL HARWARD; **Plaintiffs**, vs. JEFFREY WILDING; CADENCE FINANCIAL, LLC; BIG BEAR EQUITY HOLDINGS, LLC a/k/a BIG BEAR HOLDINGS; DAVID SELF; MARK THORN; DANIELLE HALES; CHAD MCCALL a/k/a CURRENT OCCUPANT OF 11056 RODNIA CIRCLE, SANDY, UTAH; DESERT MANAGEMENT GROUP REAL ESTATE, LLC; SELF RESERVE MANAGEMENT a/k/a DAVE SELF RESERVE MANAGEMENT; RESERVE EQUITY MANAGEMENT, LLC; and D.S. LENDING, LLC; **Defendants.**	**CERTIFICATE OF DEFAULT** Case No. 2:09-CV-00994 Judge Kimball

IN THIS ACTION, Defendant CADENCE FINANCIAL, LLC, being a Utah limited liability company, having failed to appear through and appoint new counsel as required by under 28 U.S.C.A. §1654 and DUCivR83-1.4, the time allowed by law now having expired, the

DEFAULT of Defendant CADENCE FINANCIAL, LLC pursuant to Fed. R. Civ. P. 55 is hereby entered.

DATED this 20th day of May, 2010.

D. MARK JONES
CLERK OF THE COURT

CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH CENTRAL DIVISION

PATRICIA M. LOHLE, Plaintiff, v. ARAMARK, ARAMARK CORPORATION, ARAMARK LAKE POWELL RESORTS AND MARINAS and DOES 1-25, Defendant.	**SCHEDULING ORDER** Case No. *2:09-cv-1034* District Judge *Dee Benson*

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge[1] received the Attorneys' Planning Report filed by counsel (docket #9). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

****ALL TIMES 11:59 PM UNLESS INDICATED****

1.	**PRELIMINARY MATTERS**	**DATE**
	Nature of claims and any affirmative defenses:	
a.	Was Rule 26(f)(1) Conference held?	*04/12/10*
b.	Has Attorney Planning Meeting Form been submitted?	*05/12/10*
c.	Was 26(a)(1) initial disclosure completed?	*05/26/10*
2.	**DISCOVERY LIMITATIONS**	**NUMBER**
a.	Maximum Number of Depositions by Plaintiff(s)	*10*
b.	Maximum Number of Depositions by Defendant(s)	*10*
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	*7*
d.	Maximum Interrogatories by any Party to any Party	*40*
e.	Maximum requests for admissions by any Party to any Party	*25*
f.	Maximum requests for production by any Party to any	*25*

Party

g. Discovery of electronically stored information should be handled as follows: Parties are to provide printed hard copies of the information, when possible; if not possible, or if what is provided is not satisfactory to a party, that party shall be entitled to an onsite inspection of the device where the data is being stored.

h. Claim of privilege or protection as trial preparation material asserted after production shall be handled as follows: *Not Applicable.*

3.	**AMENDMENT OF PLEADINGS/ADDING PARTIES[2]**		**DATE**
a.	Last Day to File Motion to Amend Pleadings		*01/21/11*
b.	Last Day to File Motion to Add Parties		*01/21/11*
4.	**RULE 26(a)(2) REPORTS FROM EXPERTS[3]**		**DATE**
a.	Plaintiff		*01/21/11*
b.	Defendant		*02/21/11*
c.	Counter reports		*03/07/11*
5.	**OTHER DEADLINES**		**DATE**
a.	Discovery to be completed by:		
	Fact discovery		*01/21/11*
	Expert discovery		*03/25/11*
b.	Deadline for filing dispositive or potentially dispositive motions		*03/25/11*
6.	**SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION**		**DATE**
a.	Referral to Court-Annexed Mediation:	*Yes*	
b.	Referral to Court-Annexed Arbitration	*No*	
c.	Evaluate case for Settlement/ADR on		*01/21/11*
d.	Settlement probability:	Fair	
7.	**TRIAL AND PREPARATION FOR TRIAL**	**TIME**	**DATE**
a.	Rule 26(a)(3) Pretrial Disclosures[4]		
	Plaintiff		*07/01/11*

	Defendant			*07/15/11*
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)			*00/00/00*
c.	Special Attorney Conference[5] on or before			*07/29/11*
d.	Settlement Conference[6] on or before			*07/29/11*
e.	Final Pretrial Conference		2:30 p.m.	*08/16/11*
f.	Trial	Length		
	i. Bench Trial	*3 days*	8:30 a.m.	*08/30/11*

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

May 22, 2010.

BY THE COURT:

David Nuffer
U.S. Magistrate Judge

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[1] The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately assigned or referred to that Magistrate Judge.

[2] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

[3] A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

[4] Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

[5] The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

[6] The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

KRONENBERGER BURGOYNE, LLP
Karl S. Kronenberger (admitted *pro hac vice*)
150 Post Street, Suite 520
San Francisco, CA 94108
Telephone: (415) 955-1155
Facsimile: (415) 955-1158
karl@KBInternetLaw.com

Attorney for Defendants FAREND SERVICES LIMITED, JESSE DAVID WILLMS and 1021018 ALBERTA LTD.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

DAZZLESMILE, LLC, a Utah limited liability company, and OPTIMAL HEALTH SCIENCE, LLC, a Utah limited liability company,

Plaintiffs,

v.

EPIC ADVERTISING, INC., a purported Delaware corporation AKA AZOOGLE.COM, INC., AKA AZOOGLEADS US INC., and AKA EPIC/AZOOGLE; AZOOGLE.COM, INC., a Delaware corporation; AZOOGLEADS US, INC., a non-public Delaware corporation; FAREND SERVICES LIMITED, a Cyprus registered company; JESSE DAVID WILLMS, an individual;1021018 ALBERTA LTD, a Numbered Alberta Canadian Corporation AKA JUST THINK MEDIA; ATLAST HOLDINGS, INC., a Colorado corporation, d/b/a ATLAST FULFILLMENT; NEVERBLUE MEDIA, INC., a Canadian corporation; GOOGLE, INC., a Delaware corporation, YAHOO! INC., a Delaware corporation; MICROSOFT CORPORATION, a Washington corporation; and DOES 1-10,

Defendants.
_____/

Case No. 2:09-cv-01043-PMW

ORDER GRANTING STIPULATED MOTION TO EXTEND TIME FOR DEFENDANTS FAREND SERVICES LIMITED, JESSE DAVID WILLMS, 1021018 ALBERTA LTD., EPIC ADVERTISING, INC., AZOOGLE.COM, INC., AZOOGLEADS US, INC. AND NEVERBLUE MEDIA, INC. TO RESPOND TO FIRST AMENDED COMPLAINT

Plaintiffs Dazzlesmile, LLC and Optimal Health Science, LLC ("**Plaintiffs**") and Defendants Jesse David Willms, Farend Services Limited, 1021018 Alberta Ltd., Neverblue Media, Inc., Epic Advertising, Inc., Azoogle.com, Inc. and Azoogleads US, Inc. (collectively, the "**Defendants**") filed a stipulation and joint motion to extend the deadline for Defendants file responsive pleadings in this action to June 4, 2010.

For good cause shown, the Court enters the following order:

Defendants Jesse David Willms, Farend Services Limited, 1021018 Alberta Ltd., Neverblue Media, Inc., Epic Advertising, Inc., Azoogle.com, Inc. and Azoogleads US, Inc. shall have until June 4, 2010 to file responsive pleadings to Plaintiff's first amended complaint.

IT IS SO ORDERED.

DATED: May 24, 2010

BY THE COURT:

PAUL M. WARNER
United States Magistrate Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

HEATHER M. HICKS, an individual, Plaintiff, vs. CARDON HEALTHCARE NETWORK, INC., Defendant.	**SCHEDULING ORDER AND ORDER VACATING HEARING** Case No: 2:09-cv-01120 Judge Ted Stewart

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge[1] received the Attorneys Planning Report filed by counsel (docket #9). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for **June 16, 2010, at 10:30 a.m.** is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

		PRELIMINARY MATTERS	**DATE**
		Nature of claims and any affirmative defenses:	
	a.	Was Rule 26(f)(1) Conference held?	05/07/10
	b.	Has Attorney Planning Meeting Form been submitted?	05/18/10
	c.	Was 26(a)(1) initial disclosure completed?	No - 6/15/10
2.		**DISCOVERY LIMITATIONS**	**NUMBER**
	a.	Maximum Number of Depositions by Plaintiff(s)	10
	b.	Maximum Number of Depositions by Defendant(s)	10
	c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	7
	d.	Maximum Interrogatories by any Party to any Party	25
	e.	Maximum requests for admissions by any Party to any Party	25
	f.	Maximum requests for production by any Party to any Party	25

3.		**AMENDMENT OF PLEADINGS/ADDING PARTIES**[2]		**DATE**
	a.	Last Day to File Motion to Amend Pleadings		08/17/10(P) 10/08/10(D)
	b.	Last Day to File Motion to Add Parties		08/17/10(P) 10/08/10(D)
4.		**RULE 26(a)(2) REPORTS FROM EXPERTS**[3]		
	a.	Plaintiff		01/28/11
	b.	Defendant		02/25/11
	c.	Counter reports		04/01/11
5.		**OTHER DEADLINES**		
	a.	Discovery to be completed by:		
		Fact discovery		01/14/11
		Expert discovery		04/15/11
	b.	*(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)		01/14/11
	c.	Deadline for filing dispositive or potentially dispositive motions		04/29/11
6.		**SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION**		
	a.	Referral to Court-Annexed Mediation:	Possible	
	b.	Referral to Court-Annexed Arbitration	No	
	c.	Evaluate case for Settlement/ADR on		11/30/10
	d.	Settlement probability:		unknown
7.		**TRIAL AND PREPARATION FOR TRIAL**	**TIME**	**DATE**
	a.	Rule 26(a)(3) Pretrial Disclosures[4]		
		Plaintiff		*08/12/11*
		Defendant		*08/26/11*
	b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)		*00/00/00*
	c.	Special Attorney Conference[5] on or before		*09/09/11*

d.	Settlement Conference[6] on or before			*09/09/11*
e.	Final Pretrial Conference		2:30 p.m.	*09/27/11*
f.	Trial	Length		
	i. Bench Trial	N/A	___:__ _.m.	*00/00/00*
	ii. Jury Trial	3 days	8:30 a.m.	*10/11/11*

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

May 22, 2010.

BY THE COURT:

David Nuffer
U.S. Magistrate Judge

[1] The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately assigned or referred to that Magistrate Judge.

[2] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

[3] A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

[4] Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

[5] The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

[6] The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

DAVID R. HALL (9225)
PARSONS BEHLE & LATIMER
201 South Main Street, Ste. 1800
Salt Lake City, UT 84111
Telephone: (801) 532-1234
Facsimile: (801) 536-6111
dhall@parsonsbehle.com

Attorneys for Richardson Brands Company

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

DYNAMIC CONFECTIONS, INC.

Plaintiffs,

v.

RICHARDSON BRANDS COMPANY,

Defendant.

Case No. 2:09-cv-1124

ORDER GRANTING SECOND STIPULATED MOTION FOR EXTENSION OF TIME TO ANSWER OR OTHERWISE RESPOND TO FIRST AMENDED COMPLAINT

Based upon the Stipulated Motion for Extension of Time to Answer or Otherwise Respond to First Amended Complaint, and good cause appearing therefore, IT IS HEREBY ORDERED:

Defendant is granted an extension until Wednesday, June 9, 2010 to file its answer or other responsive motion or pleading to Plaintiff's First Amended Complaint.

DATED this 24 day of May, 2010.

BY THE COURT:

Tena Campbell

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

/s/ D. Craig Parry

(signed by filing attorney with permission from Plaintiff's attorney)

D. CRAIG PARRY
PARR BROWN GEE & LOVELESS

Attorneys for Plaintiff Dynamic Confections, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA, Plaintiff	: ORDER FOR PRO HAC VICE ADMISSION
v.	: Judge Dee Benson
MILTON ANTONIO BORJAS, Defendant	: Case Number 2:10CR377

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of David Currue in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 21st day of May, 20____.

Dee Benson

U.S. District Judge

Jeremy Rogers (Utah Bar No. 09731)
Attorney for Plaintiff
5416 South 550 East
Murray, Utah 84107
Telephone: 801-550-5097
Fax: 801-905-3051
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

KENNETH L. HARRINGTON, Plaintiff, v. FIRST HORIZON HOME LOANS, A DIVISION OF FIRST TENNESSEE BANK, N.A. CORPORATION, AND JOHN AND JANE DOES OF AN UNKNOWN NUMBER, Defendants.	:	ORDER FOR VOLUNTARY DISMISSAL Case No. 2:10-CV-46 TS Honorable Ted Stewart

Based on the parties' stipulation, it is

ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Voluntary Dismissal (Docket No. 3) dated May 14, 2010 is hereby GRANTED. The Court, having found good cause and all parties having reached a mutual settlement agreement in the matter.

DATED the 24th day of May, 2010

BY THE COURT

TED STEWART
FEDERAL COURT JUDGE

Christine T. Greenwood (8187)
greenwood@mgpclaw.com
MAGLEBY & GREENWOOD, P.C.
170 South Main Street, Suite 850
Salt Lake City, Utah 84101-3605
Telephone: 801.359.9000
Facsimile: 801.359.9011

John R. Crossan (admitted *pro hac vice*)
jrc@crossaniplaw.com
CROSSAN IP LAW, LLC
70 W. Madison St., #5050
Chicago, IL 60602-4214
Telephone: 312.602.1071
Facsimile: 312.264.0110

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

PAUL FIELDS, a citizen of the United Kingdom, **Plaintiff,** **v.** **OGIO INTERNATIONAL, INC., a Utah Corporation,** **Defendant.**	**SCHEDULING ORDER AND ORDER VACATING HEARING** **Civil No. 2:10-CV-169-CW** **Honorable Clark Waddoups**

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge[i] received the Attorneys' Planning Report filed by counsel (docket #16). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for June 16, 2010, at 11:30 a.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1.	**PRELIMINARY MATTERS**	**DATE**
	Nature of claims and any affirmative defenses:	
a.	Was Rule 26(f)(1) Conference held?	5/06/10

	b.	Has Attorney Planning Meeting Form been submitted?	5/07/10
	c.	Was 26(a)(1) initial disclosure completed?	5/21/10
2.		**DISCOVERY LIMITATIONS**	**NUMBER**
	a.	Maximum Number of Depositions by Plaintiff(s)	7
	b.	Maximum Number of Depositions by Defendant(s)	7
	c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	8
	d.	Maximum Interrogatories by any Party to any Party	20
	e.	Maximum requests for admissions by any Party to any Party	20
	f.	Maximum requests for production by any Party to any Party	50
3.		**AMENDMENT OF PLEADINGS/ADDING PARTIES[ii]**	**DATE**
	a.	Last Day to File Motion to Amend Pleadings	
		Plaintiff:	5/31/10
		Defendant:	6/15/10
	b.	Last Day to File Motion to Add Parties	
		Plaintiff:	5/31/10
		Defendant:	6/15/10
4.		**RULE 26(a)(2) REPORTS FROM EXPERTS[iii]**	**DATE**
	a.	Plaintiff	2/1/11
	b.	Defendant	3/1/11
	c.	Counter reports	3/22/11
5.		**OTHER DEADLINES**	**DATE**
	a.	Discovery to be completed by:	
		Fact discovery	11/1/10
		Expert discovery	2/15/11
	b.	Deadline for filing dispositive or potentially dispositive motions	3/11/11

6.		SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION		DATE
	a.	Referral to Court-Annexed Mediation:	Yes	
	b.	Referral to Court-Annexed Arbitration	No	
	c.	Evaluate case for Settlement/ADR on		4/1/11
	d.	Settlement probability:	Fair	

7.		TRIAL AND PREPARATION FOR TRIAL		TIME	DATE
	a.	Rule 26(a)(3) Pretrial Disclosures[iv]			
		Plaintiff			*06/17/11*
		Defendant			*07/01/11*
	b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)			Per Rule
	c.	Special Attorney Conference[v] on or before			*07/15/11*
	d.	Settlement Conference[vi] on or before			*07/15/11*
	e.	Final Pretrial Conference		2:30 p.m..	*08/01/11*
	f.	Trial	Length		
		i. Bench Trial	*# days*	___:__ _.m.	*00/00/00*
		ii. Jury Trial	3 days	8:30 a.m.	*08/15/11*

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

May 22, 2010.

BY THE COURT:

David Nuffer
U.S. Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 5(b), Federal Rules of Civil Procedure, a true and correct copy of the foregoing **SCHEDULING ORDER** was delivered to the following this 10th day of May 2010:

[X] Electronic Mail (as indicated below):

Gregory S. Moesinger
gmoesinger@kmclaw.com
Michael F. Krieger
mkrieger@kmclaw.com
Adam D. Stevens
astevens@kmclaw.com
KIRTON & MCCONKIE
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111

Attorneys for Defendant Ogio International, Inc.

For Plaintiff

[i] The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately assigned or referred to that Magistrate Judge.

[ii] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

[iii] A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

[iv] Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

[v] The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

[vi] The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH CENTRAL DIVISION

IHC HEALTH SERVICE, INC. dba LDS HOSPITAL,	**SCHEDULING ORDER AND ORDER VACATING HEARING**
Plaintiff,	Case No. 2:10-CV-212-DN
vs.	
BLUE CROSS OF CALIFORNIA dba BLUE CARD,	Magistrate Judge David Nuffer
Defendant.	

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge[1] received the Attorneys' Planning Report filed by counsel (docket #16). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for *July 21,* 2010, at *10:30 a.m.* is VACATED.

ALL TIMES 4:30 PM UNLESS INDICATED

1.	**PRELIMINARY MATTERS**	**DATE**
	Nature of claim(s) and any affirmative defenses:	
a.	Was Rule 26(f)(1) Conference held?	*05/07/10*
b.	Has Attorney Planning Meeting Form been submitted?	*05/10/10*
c.	Was 26(a)(1) initial disclosure completed?	*06/05/10*

2.	**DISCOVERY LIMITATIONS**	**NUMBER**
a.	Maximum Number of Depositions by Plaintiff(s)	*7*
b.	Maximum Number of Depositions by Defendant(s)	*7*
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	*7*
d.	Maximum Interrogatories by any Party to any Party	*25*
e.	Maximum requests for admissions by any Party to any Party	*25*

f. Maximum requests for production by any Party to any Party — *unlimited*

DATE

3. AMENDMENT OF PLEADINGS/ADDING PARTIES[2]

a. Last Day to File Motion to Amend Pleadings — *10/19/10*

b. Last Day to File Motion to Add Parties — *10/19/10*

4. RULE 26(a)(2) REPORTS FROM EXPERTS[3]

a. Plaintiff — *11/18/10*

b. Defendant — *12/17/10*

c. Counter reports — *01/18/11*

5. OTHER DEADLINES

a. Discovery to be completed by:

Fact discovery — *03/18/11*

Expert discovery — *05/17/11*

b. *(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e) — *10/24/11*

c. Deadline for filing dispositive or potentially dispositive motions — *07/01/11*

6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION

a. Referral to Court-Annexed Mediation — *No*

b. Referral to Court-Annexed Arbitration — *No*

c. Evaluate case for Settlement/ADR on — *05/30/11*

d. Settlement probability: — ***Good***

7. TRIAL AND PREPARATION FOR TRIAL

a. Rule 26(a)(3) Pretrial Disclosures[4]

Plaintiff — **10/07/11**

Defendant — **10/21/11**

b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)

				DATE
c.	Special Attorney Conference[5] on or before			**11/04/11**
d.	Settlement Conference[6] on or before			11/04/11
e.	Final Pretrial Conference		2:30 p.m.	11/22/11
f.	Trial	Length	Time	Date
	i. Bench Trial	*Four days*	*8:30 a.m.*	*12/05/11*
	ii. Jury Trial	*# days*		

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 22nd day of _May__, 2010.

BY THE COURT:

David Nuffer
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

3. The identity of experts and the subject of their testimony shall be disclosed as soon as an expert is retained or, in the case of an employee-expert, as soon as directed to prepare a report.

4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

GARY E. DOCTORMAN (0895)
DAVID P. BILLINGS (11510)
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
Telephone: (801) 532-1234
Facsimile: (801) 536-6111
gdoctorman@parsonsbehle.com
dbillings@parsonsbehle.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

BANKERS' BANK OF THE WEST, a Colorado Corporation, Plaintiff, vs. CENTENNIAL BANKSHARES, INC. a Utah corporation; Defendant.	**DEFAULT JUDGMENT** Case No. 2:10-cv-00213-DB Judge Dee Benson

The defendant, Centennial Bankshares, Inc., having failed to appear, plead or otherwise defend in this action, and counsel for plaintiff having requested judgment against the defaulted defendant and having filed a proper Motion and Affidavit in accordance with Federal Rules of Civil Procedure 55 (a) and (b);

Judgment is hereby entered in favor of plaintiff Bankers' Bank of the West and against defendant Centennial Bankshares, Inc., as follows:

For the principal sum of $771,723.38 together with accrued but unpaid interest of $1,188.89 as of March 9, 2010, together with interest at 5% until paid, attorneys' fees of $2,168 and costs advanced in the amount of $535.15, together with attorneys' fees required to collect the Judgment.

DATED this 24th day of ~~April~~ May, 2010.

DEE BENSON
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

ROGER REEVE, an individual; Plaintiff, v. JOHNSON CONTROLS, INC., a Delaware Corporation; Defendant.	**SCHEDULING ORDER** Case No. 2:10-CV-218-DB Judge Benson

Pursuant to Fed.R. Civ P. 16(b), the Judge received the Attorneys' Planning Report filed by counsel (docket #8). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1. PRELIMINARY MATTERS

a. Nature of claims and any affirmative defenses:

I. This action is based in a contractual relationship between the parties. Plaintiff seeks payment for work performed under a contract which he contends Defendant has breached

II. Defendant asserts that no duty was owed to Plaintiff, that its actions were taken for a fair, honest and legitimate business reason, and that it has made all payments due to Plaintiff. Defendant further asserts that Plaintiff's lack of pay was a result of his lack of performance and that the Agent Sales Agreement speaks for itself.

b.	Was Rule 26(f)(1) Conference held? *Yes*	05/18/10	0
c.	Has Attorney Planning Meeting Form been submitted? *Yes*	05/19/10	0
d.	Was 26(a)(1) initial disclosure completed? *No*	06/10/10	0

2.	**DISCOVERY LIMITATIONS**	**NUMBER**
a.	Maximum Number of Depositions by Plaintiff(s)	*10*
b.	Maximum Number of Depositions by Defendant(s)	*10*
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	*7 per day*
d.	Maximum Interrogatories by any Party to any Party	*40*
e.	Maximum requests for admissions by any Party to any Party	*Unlimited*
f.	Maximum requests for production by any Party to any Party	*Unlimited*

3.	**AMENDMENT OF PLEADINGS/ADDING PARTIES**	**DATE**
a.	Last Day to File Motion to Amend Pleadings	*11/30/2010*
b.	Last Day to File Motion to Add Parties	*11/30/2010*

4.	**RULE 26(a)(2) REPORTS FROM EXPERTS**	**DATE**
a.	Plaintiff	*03/30/2011*
b.	Defendant	*04/30/2011*
c.	Counter reports	*05/30/2011*

5.	OTHER DEADLINES	DATE
a.	Discovery to be completed by:	
	Fact discovery	*02/30/2011*
	Expert discovery	*06/30/2011*
b.	Deadline for filing dispositive or potentially dispositive motions	*07/30/2011*

6.	SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION	DATE
a.	Referral to Court-Annexed Mediation:	*No*
b.	Referral to Court-Annexed Arbitration	*No*
c.	Evaluate case for Settlement/ADR on	*02/30/2011*
d.	Settlement probability: Good	

7.	TRIAL AND PREPARATION FOR TRIAL		TIME	DATE
a.	Rule 26(a)(3) Pretrial Disclosures			
	Plaintiff			*11/18/11*
	Defendant			*12/02/11*
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)			*00/00/00*
c.	Special Attorney Conference on or before			*12/16/11*
d.	Settlement Conference on or before			*12/16/11*
e.	Final Pretrial Conference		2:30 p.m.	*01/03/12*
f.	Trial	Length		
	i. Bench Trial	*3 days*	8:30 a.m.	*01/17/12*

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

May 22, 2010.

BY THE COURT:

David Nuffer
U.S. District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

GAEDEKE HOLDINGS VII, LTD., a Texas limited partnership, WILD WEST INVESTMENTS, LLC, a Texas limited liability company, and CIMARRON RIVER INVESTMENTS, LLC, a Texas limited liability company, Plaintiffs, v. DUDLEY & ASSOCIATES, LLC, a Delaware limited liability company, Defendant.	**SCHEDULING ORDER AND ORDER VACATING HEARING** Civil No. 2:10-cv-00220-SA Judge Clark Waddoups

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge[1] received the Attorneys' Planning Report filed by counsel (docket #20). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for July 21, 2010 is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1.		**PRELIMINARY MATTERS**	**DATE**
		Nature of claims and any affirmative defenses:	
	a.	Was Rule 26(f)(1) Conference held?	*04/30/10*
	b.	Has Attorney Planning Meeting Form been submitted?	*05/06/10*
	c.	Was 26(a)(1) initial disclosure completed?	*05/26/10*
2.		**DISCOVERY LIMITATIONS**	**NUMBER**
	a.	Maximum Number of Depositions by Plaintiff(s)	*10*

	b.	Maximum Number of Depositions by Defendant(s)	*10*
	c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	*7*
	d.	Maximum Interrogatories by any Party to any Party	*25*
	e.	Maximum requests for admissions by any Party to any Party	*30*
	f.	Maximum requests for production by any Party to any Party	*30*

g. Discovery of electronically stored information should be handled as follows:

h. Claim of privilege or protection as trial preparation material asserted after production shall be handled as follows: *Include provisions of agreement to obtain the benefit of Fed. R. Evid. 502(d).*

3.	**AMENDMENT OF PLEADINGS/ADDING PARTIES[2]**	**DATE**
a.	Last Day to File Motion to Amend Pleadings	*08/13/10*
b.	Last Day to File Motion to Add Parties	*08/13/10*

4.	**RULE 26(a)(2) REPORTS FROM EXPERTS[3]**	**DATE**
a.	Plaintiff	*11/01/10*
b.	Defendant	*11/01/10*
c.	Counter reports	*12/01/10*

5.	**OTHER DEADLINES**	**DATE**
a.	Discovery to be completed by:	
	Fact discovery	*10/15/10*
	Expert discovery	*01/14/11*
b.	*(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)	*10/15/10*
c.	Deadline for filing dispositive or potentially dispositive motions	*02/14/11*

6.	**SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION**	**DATE**
a.	Referral to Court-Annexed Mediation:	*No*

b.	Referral to Court-Annexed Arbitration		*No*	
c.	Evaluate case for Settlement/ADR on			*10/15/10*
d.	Settlement probability:		Fair	

7.	**TRIAL AND PREPARATION FOR TRIAL**		**TIME**	**DATE**
a.	Rule 26(a)(3) Pretrial Disclosures[4]			
	Plaintiff			*06/03/11*
	Defendant			*06/17/11*
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)			*00/00/00*
c.	Special Attorney Conference[5] on or before			*07/01/11*
d.	Settlement Conference[6] on or before			*07/01/11*
e.	Final Pretrial Conference		2:30 p.m.	*07/18/11*
f.	Trial	Length		
	i. Bench Trial	*3-5 days*	8:30 a.m.	*08/01/11*
	ii. Jury Trial	*# days*	___:__ _.m.	*00/00/00*

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

May 22, 2010.

BY THE COURT:

David Nuffer
U.S. District Judge

[1] The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately assigned or referred to that Magistrate Judge.

[2] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

[3] A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

[4] Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

[5] The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

[6] The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

David W. Zimmerman (5567)
HOLLAND & HART LLP
222 S. Main Street, Suite 2200
Salt Lake City, Utah 84101
Telephone: (801) 799-5800
Fax: (801) 799-5700

Attorneys for Plaintiff Jansen Construction Company of Utah

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

JANSEN CONSTRUCTION COMPANY OF UTAH, an Oregon corporation, Plaintiff, vs. GARY PATEL, an individual; KUSUM ENTERPRISES, INC., a Utah corporation, Defendants.	**DEFAULT CERTIFICATE (GARY PATEL & KUSUM ENTERPRISES, INC.)** Case No. 2:10-cv-342 Judge Dale A. Kimball

Defendants Gary Patel ("Patel") and Kusum Enterprises, Inc. ("Kusum") were served with a Summons and Complaint on April 26, 2010. Patel and Kusum are in default for failure to answer or otherwise respond to the Complaint, as required by law, now therefore, on application of Plaintiff Jansen Construction Company of Utah;

DEFAULT IS HEREBY ENTERED against Gary Patel and Kusum Enterprises, Inc. this 20th day of May, 2010.

D. MARK JONES
Clerk of the Court

by

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

ERMINA SABIC, Plaintiff, v. **FRANKLIN COVEY PRODUCTS, LLC,** Defendant.	**SCHEDULING ORDER** Case No. 2:10-CV-00343 Judge Paul M. Warner

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge[1] received the Attorneys' Planning Report filed by counsel (docket #12). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1.	**PRELIMINARY MATTERS**	**DATE**
	Nature of claims and any affirmative defenses: Interference with rights under Family Medical Leave Act.	
a.	Was Rule 26(f)(1) Conference held?	5/11/2010
b.	Has Attorney Planning Meeting Form been submitted?	5/17/2010
c.	Was 26(a)(1) initial disclosure completed?	6/11/2010

2.	**DISCOVERY LIMITATIONS**	**NUMBER**
a.	Maximum Number of Depositions by Plaintiff(s)	*10, or the number of witnesses set forth in initial disclosures, whichever is*

b.	Maximum Number of Depositions by Defendant(s)	*greater. 10, or the number of witnesses set forth in initial disclosures.*
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	*7.5*
d.	Maximum Interrogatories by any Party to any Party	*35*
e.	Maximum requests for admissions by any Party to any Party	*25*
f.	Maximum requests for production by any Party to any Party	*Unlimited*

3.	**AMENDMENT OF PLEADINGS/ADDING PARTIES[2]**	**DATE**
a.	Last Day to File Motion to Amend Pleadings	*Plaintiff: 9/10/2010 Defendant: 9/24/2010*
b.	Last Day to File Motion to Add Parties	*Plaintiff: 9/10/2010 Defendant: 9/24/2010*

4.	**RULE 26(a)(2) REPORTS FROM EXPERTS[3]**	**DATE**
a.	Plaintiff	*Four weeks after(a) the court rules on dispositive motions or the dispositive motion deadline if no motions are filed.*
b.	Defendant	*Two weeks after receipt of Plaintiff's report(s).*
c.	Counter reports	*Two weeks after receipt of Defendant's report(s).*

5.	**OTHER DEADLINES**	**DATE**
a.	Discovery to be completed by:	

	Fact discovery	*10/1/2010*
	Expert discovery	*Three months after the court rules on dispositive motions.*
b.	*(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)	*As per the rule.*
c.	Deadline for filing dispositive or potentially dispositive motions	*11/12/2010*

6.	**SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION**		**DATE**
a.	Referral to Court-Annexed Mediation:	*Yes/No*	No
b.	Referral to Court-Annexed Arbitration	*Yes/No*	No
c.	Evaluate case for Settlement/ADR on		*10/1/2010*
d.	Settlement probability:		*Undetermined at this time.*

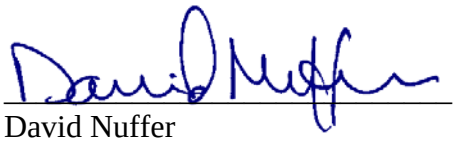
7.	**TRIAL AND PREPARATION FOR TRIAL**		**TIME**	**DATE**
a.	Rule 26(a)(3) Pretrial Disclosures[4]			
	Plaintiff			*02/18/11*
	Defendant			*03/04/11*
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)			*00/00/00*
c.	Special Attorney Conference[5] on or before			*03/18/11*
d.	Settlement Conference[6] on or before			*03/18/11*
e.	Final Pretrial Conference		2:30 p.m.	*04/04/11*
f.	Trial	Length		
	i. Bench Trial	*# days*	___:__ _.m.	*00/00/00*
	ii. Jury Trial	*2 days*	8:30 a.m.	*04/18/11*

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

May 22, 2010.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

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[1] The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately assigned or referred to that Magistrate Judge.

[2] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

[3] A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

[4] Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

[5] The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

[6] The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

SO ORDERED

Dee Benson

DEE BENSON
United States District Judge

Date 5/24/10

Colin P. King – 1815
Jessica A. Andrew – 12433
DEWSNUP, KING & OLSEN
36 South State Street
Suite 2400
Salt Lake City, Utah 84111
Telephone: (801) 533-0400
E-Mail: cking@dkolaw.com
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

DAVID COLLINS and RUTH COLLINS, husband and wife, and J. STEVEN BECK and KRISTY BECK, husband and wife, Plaintiffs, v. USA CYCLING, INC., a Colorado corporation; GREG L. RASMUSSEN, aka DAVE RASMUSSEN; DAVID W. CHRISTIANSEN, Defendants.	**MOTION TO REMAND** Case no: 2:10-cv-379 Judge Dee Benson

Plaintiffs hereby move this Court for an order remanding this case to the Third Judicial District Court, West Jordan, Salt Lake County, State of Utah. The grounds for this motion are (1) that this case is not removable under 28 U.S.C. 1441(b) because some of the Defendants are citizens of the State of Utah, and (2) that not all of the defendants joined in the removal to federal court.

A memorandum of supporting points and authorities is filed herewith.

Dated this 4 day of May, 2010.

DEWSNUP, KING & OLSEN

/s/ Jessica A. Andrew
Jessica A. Andrew
Attorney for Plaintiffs

United States District Court

Central Division for the District of Utah

Brian Abramson

v.

Salt Lake City Police Department et al.

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

Case Number: 2:10-cv-00410-CW

Having considered the application to proceed without prepayment of fees under 28 U.S.C. 1915;

IT IS ORDERED that the application is:

☑ GRANTED.

☐ DENIED, for the following reasons:

ENTER this 13th day of May, 2010

Brooke C. Wells

Signature of Judicial Officer

Brooke C. Wells, U.S. Magistrate Judge

Name and Title of Judicial Officer

AO 94 (Rev. 8/97) Commitment to Another District

UNITED STATES DISTRICT COURT

CENTRAL District of **UTAH**

UNITED STATES OF AMERICA
V.
AERON CURTIS BUSH

COMMITMENT TO ANOTHER DISTRICT

DOCKET NUMBER		MAGISTRATE JUDGE CASE NUMBER	
District of Arrest	District of Offense	District of Arrest	District of Offense
	CR10CR0263	2:10-MJ-130 DN	

CHARGES AGAINST THE DEFENDANT ARE BASED UPON AN

☒ Indictment ☐ Information ☐ Complaint ☐ Other (specify)

charging a violation of 21 **U.S.C. §** 841(a)(1) & (b)(1)(B)

DISTRICT OF OFFENSE
WESTERN DISTRICT OF TEXAS, DEL RIO DIVISION

DESCRIPTION OF CHARGES:

Possession of Marijuana with Intent to Distribute

CURRENT BOND STATUS:

☐ Bail fixed at and conditions were not met
☐ Government moved for detention and defendant detained after hearing in District of Arrest
☑ Government moved for detention and defendant detained pending detention hearing in District of Offense
☐ Other (specify)

Representation: ☐ Retained Own Counsel ☒ Federal Defender Organization ☐ CJA Attorney ☐ None

Interpreter Required? ☒ No ☐ Yes Language:

DISTRICT OF TEXAS (DEL RIO DIVISION)

TO: THE UNITED STATES MARSHAL

You are hereby commanded to take custody of the above named defendant and to transport that defendant with a certified copy of this commitment forthwith to the district of offense as specified above and there deliver the defendant to the United States Marshal for that District or to some other officer authorized to receive the defendant.

24 May 2010
Date

United States Judge or Magistrate Judge

RETURN

This commitment was received and executed as follows:

DATE COMMITMENT ORDER RECEIVED	PLACE OF COMMITMENT	DATE DEFENDANT COMMITTED

DATE	UNITED STATES MARSHAL	(BY) DEPUTY MARSHAL

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

JAKE C. PELT, et al., Plaintiffs, vs. STATE OF UTAH, Defendant.	ORDER Case No. 2:92-CV-639-TC

Counsel for Plaintiffs has filed a Motion to Strike Scandalous Allegations. Having reviewed the relevant pleadings, and pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, Plaintiffs' Motion to Strike (Docket No. 1255) is GRANTED. It is HEREBY ORDERED that certain material is stricken from the record as follows:

1. The following allegation from the Quash Motion at 2 [Docket No. 1250-2]: "Purported service on Mr. Moxley is accordingly, calculated to mislead the court."

2. The following allegations from the Enlargement Motion [Docket No. 1250]:

a. "Good cause exists in large measure because Mr. Nielson was not properly served with the Court's Order of February 19, 2010, since he was no longer attorney of record in this matter, nor was any attorney of record on his behalf." Id. at 2.

b. The underlined portion of, "Despite the deficiencies in service, Mr. Nielson has agreed that Paul T. Moxley and Catherine L. Brabson may enter a general appearance on his behalf and for the purpose of representing Nielson in connection with the

application for attorney fees and fairness hearing thereon." Id.

c. The underlined portion of, "Although the Court established the deadline for counsel, and former counsel, to submit applications for attorney fees, it did so pursuant to request from Plaintiffs' current counsel and Defendant's counsel, by motion, and without notice to or input from, Parker M. Nielson." Id. at 3.

d. The underlined portion of, "Under the circumstances, because of deficient service of the Court's order on Mr. Nielson, and because one additional week of time to submit an application for attorney fees will not result in prejudice to any of the parties, Mr. Nielson has demonstrated good cause for an enlargement of time." Id.

SO ORDERED this 24th day of May, 2010.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
Chief Judge